No. 80-2078

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In the Supreme Court of the United States

OCTOBER TERM, 1980

DAMES & MOORE, A PARTNERSHIP, PETITIONER

v.

DONALD T. REGAN, SECRETARY OF THE TREASURY, ET AL.

ON WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS

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QUESTIONS PRESENTED

1. Whether the President, during the declared national emergency following the seizure of hostages at the United States Embassy in Iran, had authority to regulate transactions in blocked Iranian assets and, as part of the settlement of the crisis, to terminate attachments and other conditional non-Iranian interests obtained in such assets pursuant to regulations and to direct the transfer of the assets as required by the terms of the settlement.

2. Whether the President, as part of the settlement with Iran, had authority to enter into an international agreement providing for submission to binding arbitration of outstanding commercial claims of United States nationals against Iran.

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Electronic Data Systems Corp., Iran v. *Social Security Organization of Iran*, 610 F.2d 94, cert. denied, No. 80-2035 (June 8, 1981)	4, 27
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First National City Bank v. *Gillilland*, 257 F.2d 223, cert. denied, 358 U.S. 837	62
Gray v. *United States*, 21 Ct. Cl. 340	41
Great Western Ins. Co. v. *United States*, 19 Ct. Cl. 206, aff'd on other grounds, 112 U.S. 193	49
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Meade v. *United States*, 2 Ct. Cl. 224, aff'd, 76 U.S. (9 Wall.) 691	50
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Miller v. *United States*, 583 F.2d 857	49
NLRB v. *Bell Aerospace Co.*, 416 U.S. 267	61
New England Merchants National Bank v. *Iran Power Generation and Transmission Co.*, 502 F. Supp. 120, remanded, Nos. 740, 1099-1144, 1145-1224, 1225-1227 (2d Cir. Apr. 9, 1981), on remand, *Marschalk Co.* v. *Iran National Airlines Corp.*, No. 79 Civ. 7035 (CBM) (S.D.N.Y. June 11, 1981)	26, 27, 31
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Treaty of Amity, Economic Relations, and Consular Rights Between the United States and Iran, Aug. 15, 1955, 8 U.S.T. 899, T.I.A.S. No. 3853 .....17, 26, 50-51

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United States-Egypt Claims Settlement through Exchange of Notes, May 19, 1979, T.I.A.S. No. 9589 46

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United States-Hungary Claims Settlement, Mar. 6, 1973, 24 U.S.T. 522, T.I.A.S. No. 7569 46

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United States-Yugoslavia Claims Settlement, July 19, 1948, 12 Bevans 1277, T.I.A.S. No. 1803..... 46

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United Nations Charter:

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Act. of Oct. 18, 1976, Pub. L. No. 94-542, 90 Stat. 2509-2513 61-62

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28 U.S.C. 1605 13

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International Emergency Economic Powers Act (IEEPA), 50 U.S.C. (Supp. III) 1701 *et seq.*..... 2-3, 15, 19

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50 U.S.C. (Supp. III) 1702(b)(2) 31
50 U.S.C. (Supp. III) 1703(b) 31
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Section 9(a), 50 U.S.C. app. 9(a) 36, 37, 38
Section 34, 50 U.S.C. app. 34 .....36, 37, 38
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Amending the Trading With the Enemy Act: Hearing on H.R. 7738 Before the Subcomm. on International Finance of the Senate Comm. on Banking, Housing and Urban Affairs, 95th Cong., 1st Sess. (1977) 30

P. Bator, M. Mishkin, D. Shapiro & H. Wechsler, *Hart and Wechsler's The Federal Courts and the Federal System* (1973) 56

E. Borchard, *The Diplomatic Protection of Citizens Abroad* (1925) 47, 50

31 C.F.R. (1976 & 1980):

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109 Cong. Rec. (1963):

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pp. 25148-25149 41

Congressional Oversight of Executive Agreements—1975: Hearings on S. 632 and S. 1251 Before the Subcomm. on Separation of Powers of the Senate Comm. on the Judiciary, 94th Cong., 1st Sess. (1975) 61

122 Cong. Rec. 33532 (1976) 26

Congressional Review of International Agreements: Hearings Before the Subcomm. on International Security and Scientific Affairs of the House Comm. on International Relations, 94th Cong., 2d Sess. (1976) 61

S. Crandall, *Treaties: Their Making and Enforcement* (1916) 47

[1973] *Digest of United States Practice in International Law* 49

Emergency Controls on International Economic Transactions: Hearings on H.R. 1560 and H.R. 2382 Before the Subcomm. on International Economic Policy and Trade of the House Comm. on International Relations, 95th Cong., 1st Sess. (1977) 29-30, 32

Executive Order:

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46 Fed. Reg. 31630 (June 16, 1981) 10

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Final Report of H. H. Martin, Acting Agent of the United States Before the Mixed Claims Commission: United States and Germany (1941) 47
Foster, *The Treaty-Making Power Under the Constitution*, 11 Yale L.J. 69 (1901) 41
5 G. Hackworth, *Digest of International Law* (1943) 41
Hearings and Markup Before the Subcomm. on Asian and Pacific Affairs and on International Economic Policy and Trade of the House Comm. on Foreign Affairs on H.R. 2200: Adjudication of Claims Against Vietnam, 96th Cong., 1st Sess. (1979) 63
L. Henkin, *Foreign Affairs and the Constitution* (1975) 49, 50
H.R. Rep. No. 2398, 79th Cong., 2d Sess. (1946) 38
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2 C. Hyde, *International Law Chiefly as Interpreted and Applied by the United States* (2d rev. ed. 1945) 41, 45, 47, 49
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Iran Asset Settlement: Hearing Before the Senate Comm. on Banking, Housing, and Urban Affairs, 97th Cong., 1st Sess. (1981) 14
R. Lillich, *International Claims: Their Adjudication by National Commission* (1962) 47
R. Lillich & B. Weston, *International Claims: Their Settlement by Lump-Sum Agreements*, 2 Vols. (1975) 40, 46, 49
Lillich, *The Gravel Amendment to the Trade Reform Act of 1974: Congress Checkmates Presidential Lump Sum Agreement*, 69 Am. J. Int'l L. 837 (1975) 41, 42

Miscellaneous—Continued Page

W. McClure, *International Executive Agreements* (1941) 41
McDougal & Lans, *Treaties and Congressional Executive or Presidential Agreements: Interchangeable Instruments of National Policy*, 54 Yale L.J. 181 (1945) 41, 51
6 J. Moore, *A Digest of International Law* (1906) .. 45, 49
J. Moore, *History and Digest of the International Arbitrations to Which the United States Has Been a Party* (1898) 47
Moore, *Treaties and Executive Agreements:* 20 Pol. Sci. Q. 385 (1905) 43, 47
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S. Exec. Rep. No. 5, 81st Cong., 2d Sess. (1950) 26
S. Exec. Rep. No. 5, 83d Cong., 1st Sess. (1953) 26
S. Rep. No. 1839, 79th Cong., 2d Sess. (1946) 37
S. Rep. No. 94-1188, 94th Cong., 2d Sess. (1976) 62
S. Rep. No. 94-1310, 94th Cong., 2d Sess. (1976) 57, 59, 60, 61
S. Rep. No. 95-466, 95th Cong., 1st Sess. (1977) 31, 32
S. Rep. No. 97-71, 97th Cong., 1st Sess. (1981) 43
Status of Claims Settlements with Nonmarket Countries, East German Claims Bill: Hearings on H.R. 14642 Before the Subcomm. on International Trade and Commerce of the House Comm. on International Relations, 94th Cong., 2d Sess. (1976) 48, 62
A. Stuyt, *Survey of International Arbitrations* (1972) 47

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Subcomm. on International Trade and Commerce of the House Comm. on International Relations, 94th Cong., 2d Sess., *Trading With the Enemy: Legislative and Executive Documents Concerning Regulation of International Transactions in Time of Declared National Emergency* 557 *et seq.* (Comm. Print 1976) 32

The Mavrommatis Palestine Concessions, Judgment, P.C.I.J. Series A, No. 2 (1924) 52

15 Weekly Comp. of Pres. Doc. 2118 (Nov. 14, 1979) 20, 4a

M. Whiteman, *Damages in International Law:*

Vol. 1 (1937) 49
Vol. 3 (1943) 47
Vol. 8 (1967) 49

M. Whiteman, *Digest of International Law:*

Vol. 12 (1971) 41, 45
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In the Supreme Court of the United States

OCTOBER TERM, 1980

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DAMES & MOORE, A PARTNERSHIP, PETITIONER

v.

DONALD T. REGAN, SECRETARY OF THE TREASURY, ET AL.

ON WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS

OPINIONS BELOW

The order (Pet. App. 106-107) and memorandum (Pet. App. 161) of the district court are unreported.

JURISDICTION

The order of the district court was filed on May 28, 1981, and was entered on June 2, 1981. Petitioner filed a notice of appeal on June 3, 1981 (Pet. App. 163-164), and the appeal was docketed in the court of appeals on June 4, 1981 (Pet. App. 162). The petition for a writ of certiorari before judgment was filed on June 10, 1981, and was granted on June 11, 1981. The jurisdic-

tion of this Court is invoked under 28 U.S.C. 1254(1) and 2101(e).

CONSTITUTIONAL PROVISIONS AND STATUTES AND REGULATIONS INVOLVED

The two "Algerian Declarations," constituting an international agreement between the United States and Iran, and pertinent constitutional, statutory and regulatory provisions are set forth at Pet. App. 21-35, 108-159.

STATEMENT

On November 4, 1979, more than 50 American citizens were seized and held hostage at the United States Embassy in Tehran, Iran. That hostile and unprecedented act precipitated a crisis between the United States and Iran, which ultimately involved Iran's threat to withdraw its assets from this country, the President's declaration of a national emergency and the blocking of Iranian assets, the breaking of diplomatic relations, and the loss of American lives in a military rescue operation. On January 19, 1981, the United States and Iran peacefully resolved many of their outstanding disputes, reaching agreement for the release of the hostages, the settlement of claims, and the return of the blocked Iranian property. This case involves the legality of the President's actions undertaken in connection with this international agreement.

1. On November 14, 1979, in response to the taking of the American hostages and an Iranian threat to withdraw its assets from this country, President Carter declared a national emergency[1] pursuant to the International Emergency Economic Powers Act (IEEPA), 50

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[1] The President's declaration was accompanied by a finding, as required by 50 U.S.C. (Supp. III) 1701(a), that the situation in Iran constituted an "unusual and extraordinary threat * * * to the national security, foreign policy, or economy of the United States." Petitioner has not challenged the validity of that finding.

U.S.C. (Supp. III) 1701 *et seq.*, and issued Executive Order No. 12170 (44 Fed. Reg. 65729) (App., *infra*, 1a) blocking property of the Government of Iran, its controlled entities, and the Central Bank of Iran that was subject to the jurisdiction of the United States. Implementing Treasury Department regulations provided that any attachment of such property occurring after the blocking order was invalid without a license from the Secretary of the Treasury. See 31 C.F.R. 535.201, 535.203(a), 535.310, 535.502 *et seq.* (1980).

Shortly thereafter, on November 26, 1979, the Secretary granted a general license authorizing certain judicial proceedings against Iran, with the exception of the "entry of any judgment or of any decree or order of similar or analogous effect * * *." 31 C.F.R. 535.504(a), (b)(1) (1980). On December 19, 1979, the Secretary issued a clarifying regulation, stating that "[t]he general authorization for judicial proceedings contained in § 535.504 (a) includes pre-judgment attachment." 31 C.F.R. 535.418 (1980). The regulations have at all relevant times expressly provided that any license "may be amended, modified or revoked at any time" (31 C.F.R. 535.805 (1980)) and that without such a license any attachment is "null and void." 31 C.F.R. 535.203(e).

2. On December 19, 1979, subsequent to the President's blocking order,[2] petitioner filed suit in the United States District Court for the Central District of California against the Government of Iran, the Atomic Energy Organization of Iran (AEOI), and a number of Iranian banks that, petitioner asserts (Pet. 5), had been nationalized by the Government of Iran. *Dames & Moore* v. *Atomic Energy Organization of Iran*, No. 79-04918 LEW (Px) (C.D. Cal.). Petitioner alleged that it was a party to a written contract with AEOI, under

[2] In this respect petitioner's case is typical. We have been advised by counsel for Iran that only a few of the approximately 450 cases pending against Iranian entities as of the end of May 1981 involve complaints filed prior to the blocking order.

which it was required to conduct certain site studies for a proposed nuclear power plant in Iran.[3] The contract was terminated by AEOI on June 30, 1979, for the convenience of AEOI, as provided in the contract. Petitioner contended that it was owed $3,436,694.30 for services performed under the contract prior to the date of termination.[4]

Subsequent to the filing of petitioner's complaint, the district court issued orders of attachment directed against property of the defendants, and property of certain bank defendants was thereby attached to secure any judgment that might be entered against them.[5] On January 27, 1981, after the January 19, 1981 Agreement

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[3] Actually, the complaint states that the party to the contract was a wholly owned subsidiary of petitioner, Dames & Moore International, S. R. L., and that this entity had assigned its entire interest under the contract to petitioner. For convenience, we will regard petitioner as the party to the contract.

[4] The contract with AEOI provided that if any dispute arising thereunder could not be resolved by agreement between the parties, the dispute would be submitted to conciliation and, if either party was dissatisfied with the results of conciliation, "the matter shall be decided finally by resort to the courts of Iran" (Pet. 7 n.2). In its complaint in the action against the Iranian defendants, petitioner alleged that it had sought a meeting with AEOI for purposes of final settlement of all matters relating to the contract but that AEOI "has continually postponed said meeting and obviously does not intend that it take place" (Complaint in *Dames & Moore* v. *Atomic Energy Organization of Iran*, *supra*, at ¶ 27).

[5] We have not seen documents itemizing the attached assets, but we have been informed by counsel for petitioner that some of the assets on which attachments were obtained are held by domestic banking institutions and are therefore assets that must be transferred pursuant to the Agreement with Iran (see page 7, *infra*) by July 19, 1981. Again, petitioner's case is typical. Although there are outstanding orders of attachment against Iranian property in approximately 200 cases, we believe that only three claimants obtained attachments prior to the President's blocking order. The assets subject to these attachments are not subject to transfer. See the government's Memorandum in Opposition in *Electronic Data Systems Corp., Iran* v. *Social Security Organization of Iran*, cert. denied, No. 80-2035 (June 8, 1981).

with Iran but prior to President Reagan's February 24, 1981 Executive Order suspending claims (see page 9, *infra*), petitioner moved for summary judgment against AEOI and the Government of Iran (but not the Iranian banks).[6] On February 18, 1981, the district court granted petitioner's motion for summary judgment against AEOI and the Government of Iran for the amount claimed under the contract, plus interest.

AEOI and the Government of Iran filed a notice of appeal from this judgment on March 20, 1981. Petitioner attempted to execute on this judgment by obtaining writs of garnishment and execution in state court in the State of Washington, and a sheriff's sale of Iranian property was noticed in Washington to satisfy the judgment (Pet. 5-6; Pet. App. 15-18).[7] However, by order of May 28, 1981, as amended by order of June 8, the district court stayed execution of the judgment pending the appeal of that judgment by AEOI and the Government of Iran (Pet. App. 106-107). On May 28, 1981, the district court also ordered that all pre-judgment attachments obtained in the suit against the Iranian defendants be vacated and that further proceedings against the bank defendants be stayed (*id.* at 107).

3. a. On January 19, 1981, the United States and Iran entered into an Agreement to release the hostages and to settle other disagreements between the two nations. The Agreement is principally comprised of two Declarations of the Government of Algeria, to which the

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[6] The motion was accompanied by affidavits attesting to the amount owing under the contract and by a request pursuant to Fed. R. Civ. P. 37(b)(2) to prohibit AEOI and the Government of Iran from introducing any evidence in opposition to petitioner's motion for summary judgment as a sanction for AEOI's failure to comply with petitioner's discovery requests.

[7] Petitioner did not obtain a pre-judgment attachment of assets of the Government of Iran or AEOI, the two defendants against which judgments were entered.

United States and Iran adhered: (1) Declaration of the Government of the Democratic and Popular Republic of Algeria (hereinafter "Decl. I") (Pet. App. 21-29), and (2) Declaration of the Government of the Democratic and Popular Republic of Algeria Concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran (hereinafter "Decl. II") (Pet. App. 30-35).

The Agreement states that "the purpose of both parties" is "to terminate all litigation as between the Government of each party and the nationals of the other, and to bring about the settlement and termination of all such claims through binding arbitration" (Decl. I, ¶ B; Pet. App. 21-22). Iran and the United States agree that they "will promote the settlement of * * * claims" and that "[a]ny such claims not settled within six months * * * shall be submitted to binding third-party arbitration * * *" (Decl. II, Art. I; Pet. App. 30).

The Agreement establishes the Iran-United States Claims Tribunal, to which American claimants (with some exceptions) may present their claims. Awards of the Tribunal are "final and binding" (Decl. II, Art. IV, ¶ 1; Pet. App. 32) and are enforceable "in the courts of any nation in accordance with its laws" (Decl. II, Art. IV, § 3; Pet. App. 32). Iran has agreed to the payment of awards certified by the Tribunal in full, without limitation as to number or amount and without regard to the total amount of Iranian assets that previously remained in the United States. Iran also has agreed to the establishment of a security account, with an initial deposit of one half (up to $1 billion) of Iranian funds and securities currently held in banks in the United States, to satisfy awards to American claimants and has agreed to maintain a minimum balance of

$500 million in the account until all awards of the Tribunal have been paid (Decl. I, ¶ 7; Pet. App. 25).[8]

In connection with the establishment of the Tribunal, which offers American claimants the advantages of arbitration and frees them from the vagaries and hazards of domestic litigation against a foreign sovereign, the United States agreed, through the procedures provided in Declaration II, "to terminate all legal proceedings in United States courts involving claims of United States persons and institutions against Iran and its state enterprises, to nullify all attachments and judgments obtained therein, to prohibit all further litigation based on such claims, and to bring about the termination of such claims through binding arbitration" (Decl. I, ¶ B; Pet. App. 22). Furthermore, the United States must "act to bring about the transfer [of Iranian funds and securities held in banks in this country] within six months" from the date of the Agreement, *i.e.*, by July 19, 1981 (Decl. I, ¶¶ 6, 7;

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[8] Under the Agreement, the United States is not required to place any assets in a security account to fund Tribunal awards in favor of Iranian claimants.

As part of the agreements for the release of the hostages, the United States, on January 20, 1981, brought about the transfer to the Bank of England of some $8 billion of Iranian assets. These assets consisted of approximately $5.5 billion of Iranian funds, securities and deposits that were held in overseas branches of American banks, almost $2.4 billion of assets held by the Federal Reserve Bank of New York, and $40 million from the Foreign Military Sales Trust Fund. Also on January 20, $3.667 billion from these assets that were transferred to the Bank of England were returned to the Federal Reserve Bank of New York for the payment of unpaid principal and interest through December 31, 1980, on all loans and credits to Iran or its entities by syndicates of banking institutions of which American banking institutions were a member. These payments have already been made. A further $1.418 billion from the $8 billion transferred to the Bank of England were set aside in an escrow account and are to be used for the payment of nonsyndicated loans of American banks to Iran and its entities. Only about $2.9 billion of the $8 billion was actually returned to Iran.

Pet. App. 24-25). Failure to transfer the assets within the prescribed time might be regarded by Iran as a material breach of the Agreement and could jeopardize Iran's considerable financial undertakings on behalf of American claimants and cause the Tribunal to adjudge the United States in default, with potentially serious diplomatic and financial consequences for this country (see Decl. II, Art. II, ¶ 3; Pet. App. 31). See generally Declaration of Secretary of State Alexander M. Haig, Jr., ¶ 5 (Feb. 24, 1981) (App., *infra*, 2a-3a).

b. To fulfill the United States' commitment under these international agreements, President Carter, on January 19, 1981, issued a series of Executive Orders, pursuant to his authority under IEEPA, revoking the conditional license previously issued for pre-judgment attachments against Iranian assets,[9] nullifying non-Iranian rights in the assets acquired since the blocking order, precluding persons subject to United States jurisdiction from acquiring further interests in the blocked Iranian assets, directing those persons holding blocked Iranian funds and securities to transfer them to the Federal Reserve Bank of New York for disposition as the Secretary of the Treasury directs, and requiring those persons holding other Iranian property in the United States to transfer the property as directed by Iran. Executive Order Nos. 12277-12281, 46 Fed. Reg. 7915-7924 (Jan. 23, 1981) (Pet. App. 36-51).

After an exhaustive review of the terms of the Agreement, the present Administration determined that conclusion of the Agreement "was a legal exercise of Presidential authority" and that it should be "implement[ed]" because it "represent[s] the surest way of resolving many of the financial problems between the United States and Iran consistent with the interests of U.S. claimants

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[9] Neither the Executive Orders nor the implementing regulations, 31 C.F.R. 535.218(b) (46 Fed. Reg. 14334 (Feb. 26, 1981)), purport to terminate valid pre-judgment attachments acquired prior to November 14, 1979 against Iranian property. See note 5, *supra*.

and the broader interests of the United States in the Persian Gulf area, a region of strategic importance to the United States" (Haig Declaration, *supra*, ¶ 4; App., *infra*, 2a-3a). Accordingly, on February 24, 1981, in furtherance of the Agreement with Iran, President Reagan "suspended" "[a]ll claims which may be presented to the Iran-United States Claims Tribunal under the terms of Article II of the Declaration of the Government of * * * Algeria Concerning the Settlement of Claims * * *."[10] The President's order provides that, "[d]uring the period of this suspension, all such claims shall have no legal effect in any action now pending in any court of the United States * * *." Executive Order No. 12294, § 1, 46 Fed. Reg. 14111 (Feb. 26, 1981) (Pet. App. 52-54).[11]

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[10] President Reagan acted "in view of the continuing unusual and extraordinary threat to the national security, foreign policy and economy * * *, in light of the agreement with the Government of Iran * * * in order to implement Article II of the Declaration of Algeria concerning the settlement of claims[,] and to begin the process of normalization of relations between the United States and Iran." Executive Order No. 12294, 46 Fed. Reg. 14111 (Feb. 26, 1981) (Pet. App. 52).

[11] The Executive Order provides that if the Tribunal determines that it does not have jurisdiction over a claim, the suspension of that claim terminates. If the Tribunal (1) rejects the claim on the merits or (2) provides that a claimant shall have a recovery, and the claimant is paid the full amount of the Tribunal award, then either situation "shall operate as a final resolution and discharge of the claim for all purposes" (*Id.* at §§ 3, 4).

The Executive Order further provides that (1) the suspension applies to all requests for equitable or judicial relief in connection with claims that may be presented to the Tribunal under Article II; (2) the suspension applies to all claims either currently pending or filed after the date of the Order; (3) the commencement of an action for purposes of tolling a period of limitation is not precluded; (4) nothing in the Order requires dismissal of any action for want of prosecution; (5) nothing in the Order applies to any claim concerning the validity or payment of a standby letter of credit, performance or payment bond, or other similar instrument; (6) nothing in the Order prohibits the assertion of a counterclaim or set-off by a United States national in any

The Treasury Department has issued the appropriate regulations pursuant to the provisions of the various Executive Orders. See, *e.g.*, 31 C.F.R. 535.213, 535.214, 535.215, 535.218, 535.222, 46 Fed. Reg. 14334-14335 (Feb. 26, 1981) (Pet. App. 72-79). The regulations published on February 26 provided, *inter alia*, that "[u]ntil the Secretary * * * determines that the authority of the United States to order [the transfers required by the Executive Orders and regulations] has been the subject of a definitive legal ruling, the United States Government will not seek to impose * * * sanctions on any party who does not make [such transfers]." 31 C.F.R. 535.221(b), 46 Fed. Reg. 14335 (Feb. 26, 1981) (Pet. App. 76-77). After two courts of appeals had issued rulings upholding the Executive's authority to suspend claims against Iran and to direct the transfer of Iranian assets,[12] the Treasury Department on June 4, 1981, amended its regulations to require that banks and other persons holding Iranian financial assets must transfer them, under pain of civil or criminal liability, to the Federal Reserve Bank of New York by Noon, June 19, 1981. 31 C.F.R. 535.213, 535.214, 535.221, 46 Fed. Reg. 30341 (June 8, 1981). In view of this Court's grant of review in the present case, however, the Treasury Department has extended the transfer date. 31 C.F.R. 535.213(e), 535.214(e), 46 Fed. Reg. 31630 (June 16, 1981).

c. During the past two months, the United States and Iran have worked together to establish the organizational framework for the arbitral proceeding. Three arbitrators

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judicial proceeding pending or hereafter commenced by Iran or its entities; (7) Executive Order Nos. 12276 through 12285 are ratified; and (8) all powers granted the President by IEEPA are delegated to the Secretary of the Treasury for purposes of carrying out the Order (*Id.* at §§ 1, 2, 5, 6, 7, 8).

[12] *Chas. T. Main Int'l, Inc.* v. *Khuzestan Water & Power Authority*, No. 80-1027 (1st Cir. May 22, 1981); *American Int'l Group, Inc.* v. *Islamic Republic of Iran*, Nos. 80-1779, 80-1891 (D.C. Cir. June 5, 1981).

appointed by the United States met with the three Iranian arbitrators at the Peace Palace in The Hague beginning on May 18, 1981. On June 9, 1981, the arbitrators announced the selection of the three third-country arbitrators: Gunnar Lagergren, a former President of the Court of Appeal of Western Sweden, who will be President of the Tribunal; Nils Mangard, currently a judge of the Court of Appeal of Stockholm; and Pierre Bellet, recently retired as First President of the Cour de Cassation in France. The nine members of the Tribunal are scheduled to meet at The Hague beginning on July 1, 1981, for organizational purposes and related matters.

In addition, the Department of State has announced that it received a message from Iran stating that the "relevant Iranian organizations are prepared to start negotiations with the U.S. parties concerned [claimants]" and suggesting that the negotiations be carried out in London. Public Notice 753 (46 Fed. Reg. 25026 (May 4, 1981)). By a diplomatic note of May 7, 1981, Iran informed the State Department that it proposed to hold these negotiations in Vienna rather than London.

4. On April 28, 1981, petitioner filed the instant suit for declaratory and injunctive relief against the United States and the Secretary of the Treasury, seeking to prevent enforcement of the Executive Orders and Treasury Department regulations implementing the Agreement with Iran in a way that would adversely affect its separate action against the Iranian defendants (Pet. App. 1-12). Petitioner contended that these Executive Orders and regulations are unconstitutional to the extent that they affect its final judgment against the Government of Iran and AEOI, its execution on that judgment in the State of Washington, its pre-judgment attachments of assets of the Iranian bank defendants, and its ability to continue to litigate against the bank defendants, against whom judgment has not yet been entered (Pet. App. 7-11).

By order dated May 28, 1981, the district court denied petitioner's motion for a preliminary injunction and dismissed petitioner's complaint for failure to state a claim upon which relief could be granted (Pet. App. 106-107). On June 8, 1981, the district court issued a memorandum stating that its order denying a preliminary injunction and dismissing the complaint were based on the arguments presented by the government in its motion to dismiss and its brief in support of that motion (*id.* at 161). The government's motion to dismiss and the brief in support thereof, relied upon by the district court, are reproduced at Pet. App. 88-105.

On June 3, 1981, petitioner filed a notice of appeal from the order denying a preliminary injunction and dismissing the complaint (Pet. App. 163-164), and the appeal has been docketed in the court of appeals (*id.* at 162). On June 8, 1981, the district court entered an injunction pending appeal preventing the federal government from requiring the transfer of Iranian property that is subject to any writ of attachment, garnishment, judgment, levy or lien issued by any court in favor of petitioner (*id.* at 167-168).

INTRODUCTION AND SUMMARY OF ARGUMENT

Although the President's primary motivation in blocking Iranian assets, entering into the Agreement with Iran, and issuing the Executive Orders implementing the Agreement was the protection of the national security and foreign policy of the United States, the President's actions also were designed to benefit Americans (such as petitioner) having claims against Iran. The President made clear when the November 14, 1979, blocking order was issued that it was "in response to reports that the Government of Iran [was] about to withdraw its funds" from the jurisdiction of the United States and that its purpose was "to ensure that claims on Iran by the United States and its citizens are provided for in an orderly manner" (App., *infra*, 4a). Petitioner and virtually all other plaintiffs in the more than 400 pending cases against Iran filed suit and obtained attachments of Iranian property *after* the blocking order. Thus, absent the President's blocking order, there may well have been no Iranian assets in the United States against which American claimants such as petitioner could have obtained orders of attachment.

Moreover, as the dearth of suits filed against Iran prior to the blocking order suggests, American claimants faced a variety of obstacles to recovery in United States courts. These obstacles included arguments by Iran in individual cases that (1) contacts with the United States were insufficient to support in personam jurisdiction against the Iranian governmental entity (28 U.S.C. 1605); (2) the Act of State doctrine (see *Banco Nacional de Cuba* v. *Sabbatino*, 376 U.S. 398 (1964)) barred expropriation claims; and (3) Iranian assets that might secure a final judgment were immune from pre-judgment attachment because they belonged to Iran's Central Bank (28 U.S.C. 1611(b)), because Iran had not explicitly waived its immunity from pre-judgment attachment (28 U.S.C. 1610(d)), or because the assets attached did not belong to the Iranian entity against which the plaintiff had a claim. In addition, many contracts on which

American claimants sought to recover, including petitioner's, provided for resolution of disputes in Iranian courts. See *Iran Assset Settlement: Hearing Before the Senate Comm. on Banking, Housing, and Urban Affairs*, 97th Cong., 1st Sess. 42 (1981).

The Agreement with Iran substantially removes these impediments and accomplishes the President's objective to protect American claimants. Approximately $3.667 billion have already been paid to syndicates of which American banks are members from blocked funds transferred by the President when the Agreement was reached, and a sufficient amount of the funds ($1.418 billion) remains in an escrow account in the Bank of England to satisfy the remainder of the American banks' outstanding loans to Iran. See note 8, *supra*. Furthermore, of the blocked assets held by domestic banks that must be transferred by July 19, 1981, half (up to $1 billion) will be used to fund a security account from which awards of the Iran-United States Claims Tribunal will be paid. To the extent that the total of American awards against Iran exceeds that amount, Iran has agreed to maintain a minimum of $500 million in the account until all awards have been paid. American claimants who received favorable awards from the Tribunal also will be able to sue to enforce their awards in any country (Decl. II, Art. IV, ¶ 3; Pet. App. 32).

In general, all claims arising out of "debts, contracts * * *, expropriations or other measures affecting property rights" are within the jurisdiction of the Tribunal (Decl. II, Art. II, ¶ 1; Pet. App. 30-31). Iran will not have available to it before the Tribunal the defenses of sovereign immunity, Act of State, and lack of personal jurisdiction. If the Tribunal decides that it does not have jurisdiction over a particular claim because of an exclusive forum clause in a contract or for some other reason, that claim will no longer be suspended under the terms of § 3 of Executive Order No. 12294 (Pet. App. 53). In that event, litigation on the claim can be resumed in United States courts, unaffected by the President's exercise of his claims settlement authority.

Whether or not a claim is within the Tribunal's jurisdiction, however, the Executive Orders implementing the Agreement require that all Iranian assets be transferred in accordance with the terms of the Agreement, irrespective of any orders of attachment against that property. This results not from the President's exercise of his power to settle claims, but from his distinct power under the International Emergency Economic Powers Act (IEEPA), 50 U.S.C. (Supp. III) 1701 *et seq.*, to direct the disposition of all foreign assets in time of a declared national emergency.

I.

Pursuant to the Agreement with Iran, the United States must transfer by July 19, 1981, blocked Iranian assets held by domestic banks to either the Security Account or to Iran. The failure to do so could be considered a material breach of the Agreement, with serious diplomatic and financial consequences for the United States. To fulfill that obligation, the President has terminated non-Iranian interests in blocked Iranian property and directed the transfer of that property.

These actions clearly are authorized by the language of IEEPA. That statute empowers the President to "regulate, direct and compel, nullify, void, prevent or prohibit, any * * * transfer" with respect to foreign property when, as here, he has declared a national emergency. 50 U.S.C. (Supp. III) 1702(a)(1)(B). Following the seizure of the hostages, the President's blocking order "prevented" and "prohibited" the transfer of any interest in Iranian property without authorization from the federal government. Thereafter, all transfers of interests in blocked property, including transfers pursuant to judicial order, were subordinate to the President's previously asserted right to control the disposition of the property and required a license from the Executive. *Propper* v. *Clark*, 337 U.S. 472 (1949).

The Treasury Department did license claimants to institute judicial proceedings, including pre-judgment at-

tachments and orders restraining transfer of Iranian assets. But, consistent with the prohibition against transfers of interests in that property, the license did not permit the entry or execution of a judgment with respect to Iranian property. Furthermore, the Executive expressly reserved the right to revoke any license at any time (31 C.F.R. 535.203(c) (1980)), thereby making the license for attachments conditional and ineffective against subsequent Executive directives pursuant to IEEPA. See *Orvis* v. *Brownell*, 345 U.S. 183 (1953). Hence, petitioner was on notice from the outset that the property subject to its attachments could be transferred if the President determined that the national interest so required.

Upon entering into the Agreement with Iran, the President revoked the license for pre-judgment attachments and other non-Iranian interests in Iranian property, and under IEEPA "directed" and "compelled" the transfer of the blocked assets to implement the Agreement. Because petitioner's attachments and those of virtually all other claimants were obtained *after* the President issued the blocking order, they were valid against Iran only while the revocable license permitting them remained in effect, and they were at all times subordinate to the President's paramount power to transfer the property subject to the attachments. Accordingly, those attachments do not prevent the transfer of the property by the President pursuant to the Agreement.

The President's actions are consistent with the purposes of IEEPA as well. IEEPA was enacted to enable the President to deal with unusual and extraordinary threats to the national security, foreign policy and economy of the United States (50 U.S.C. (Supp. III) 1701(a)), and granted the President economic powers sufficiently broad and flexible to enable him to respond as appropriate and necessary to unforeseen contingencies. H. R. Rep. No. 95-459, 95th Cong., 1st Sess. 1 (1977). By utilizing his IEEPA powers and controlling transfers of Iranian property, the President preserved the United States' ability to negotiate and implement an agreement with

Iran concerning the disposition of its property, which not only resolved the hostage crisis, but also provided a mechanism for the settlement of American claims against Iran for full value.

II.

The President has authority under the Constitution to settle outstanding international claims of American nationals. *United States* v. *Pink*, 315 U.S. 203 (1942). He has exercised that authority from the earliest days of the Republic, often by providing for the presentation of claims of American nationals to international arbitration. The President's constitutional authority repeatedly has been recognized and approved by Congress and, at least with respect to recent claims against Iran, has been supplemented by authority conferred on the President under 22 U.S.C. 1732, IEEPA, and the 1955 Treaty of Amity, Economic Relations, and Consular Rights with Iran.

Pursuant to these authorities, the President entered into a claims-settlement agreement with Iran, making arbitration the exclusive remedy for all claims within the jurisdiction of the Iran-United States Claims Tribunal. To implement the Agreement, the President suspended the domestic effect of all claims that may be presented to that Tribunal. Because a decision on the merits by the Tribunal and payment of any award operates as "a final resolution and discharge of the claim for all purposes" (Executive Order No. 12294, §§ 3 and 4; Pet. App. 53), litigation in the United States judicial system of claims that may be presented to the Tribunal should be stayed pending a decision by the Tribunal.

The Agreement and implementing Executive Orders and regulations do not infringe upon the jurisdiction of the courts. Rather, the exercise of the President's claims-settlement authority with respect to claims of American nationals against Iran works a substantive change in law

that the courts, in the proper exercise of their jurisdiction, are obliged to follow. This Court has long recognized that the law resulting from such international agreements is binding on pending cases in the courts. *United States* v. *The Schooner Peggy*, 5 U.S. (1 Cranch) 103 (1801). Contrary to petitioner's argument, the Foreign Sovereign Immunities Act, 28 U.S.C. 1602 *et seq.*, does not change this principle, nor does its language or legislative history purport to restrict in any way the President's authority to settle claims of American nationals against a foreign state.

Finally, as the two courts of appeals to decide the issue have held, petitioner's Fifth Amendment taking claim based on the exercise of the President's claims-settlement authority is premature. That argument is without merit in any event, because the effect of the Agreement is simply to provide that the same claims that are pending in United States courts will be heard in a different forum—the Claims Tribunal—capable of granting complete relief.

ARGUMENT

I. THE INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT AUTHORIZED THE PRESIDENT TO BLOCK IRANIAN ASSETS FOR USE IN SETTLING THE IRANIAN CRISIS AND, AS PART OF THE SUBSEQUENT RESOLUTION OF THE CRISIS, TO DIRECT THE TRANSFER OF IRANIAN ASSETS AGAINST WHICH PETITIONER HAD OBTAINED ORDERS OF ATTACHMENT

As Justice Jackson observed in *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579, 634, 655 (1952) (concurring opinion), Presidential power is at its maximum when exercised with the express or implied authorization of Congress. The President's actions in this case—blocking Iranian assets, issuing revocable licenses for pre-

judgment attachments of those assets and then revoking the licenses and nullifying the attachments—clearly fall within that preferred category. Each of those acts is fully consistent with the language, purposes, and background of the International Emergency Economic Powers Act (IEEPA), 50 U.S.C. (Supp. III) 1701 *et seq.*

As we show below, in enacting IEEPA Congress recognized the necessity for the President to possess this authority to control dispositions of alien property in an effort to deal with external threats to the national security, foreign policy, or economy of the United States. Moreover, petitioner's pre-judgment attachments—which were obtained only because of a Treasury license (expressly made revocable) issued following the blocking order—are ineffective to prevent the President's decision to transfer the Iranian assets.

A. The Plain Language Of IEEPA Authorized The President's Actions With Respect To Iranian Assets

1. *IEEPA Empowered The President To Freeze Iranian Assets And Subsequently To Direct Their Transfer Pursuant To The Agreement With Iran*

"[T]he language of IEEPA," as the First Circuit has observed, "is sweeping and unqualified." *Chas. T. Main Int'l, Inc.* v. *Khuzestan Water & Power Authority*, No. 80-1027 (1st Cir. May 22, 1981), at 9. The statute provides that, when the President has declared a national emergency with respect to a threat to the national security, foreign policy, or economy of the United States, he may, "under such regulations as he may prescribe, by means of instructions, licenses, or otherwise—"

> (A) investigate, regulate, or prohibit—
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> * * * * *
>
> (ii) transfers of credit or payments between, by, through, or to any banking institution, to the extent that such transfers or payments involve any interest of any foreign country or a national thereof,
>
> * * * * *

> (B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest;
>
> by any person, or with respect to any property, subject to the jurisdiction of the United States.

50 U.S.C. (Supp. III) 1702(a)(1).

On November 14, 1979—ten days after the seizure of the American hostages in Iran and the day on which Iran threatened to withdraw Iranian assets from this country—President Carter invoked these powers under IEEPA and "order[ed] blocked all property and interests in property of the Government of Iran, its instrumentalities and controlled entities and the Central Bank of Iran which are or become subject to the jurisdiction of the United States or which are in or come within the possession or control of persons subject to the jurisdiction of the United States." Executive Order No. 12170, 44 Fed. Reg. 65729 (1979) (App., *infra*, 1a). This order was supported by the President's finding "that the situation in Iran constitutes an unusual and extraordinary threat to the national security, foreign policy and economy of the United States" [13] and the requisite declaration of a national emergency "to deal with that threat" (*ibid.*). The seizure of the American hostages and the circumstances surrounding that seizure constituted a compelling basis for the President to invoke his powers under IEEPA in November 1979.[14] Petitioner does not contend

[13] The President stated in his report to Congress that the then-recent events in Iran and actions of the Government of Iran put at grave risk the personal safety of United States citizens and the lawful claims of United States citizens and entities against the Government of Iran. 15 Weekly Comp. Doc. 2118 (Nov. 14, 1979).

[14] That the seizure of the American hostages constituted a particularly appropriate occasion for the exercise of the President's

otherwise. The issue here is the extent and nature of the powers the President possesses under IEEPA in circumstances where the Act has been properly invoked.

The President's blocking order of November 14, 1979, which froze the status quo respecting Iranian assets subject to the jurisdiction of the United States, was fully consistent with the terms of IEEPA . The effect of the order was to "regulate or prohibit * * * transfers of credit or payment between, by, through, or to any banking institution" to the extent such transfers involved Iranian assets (50 U.S.C. (Supp. III) 1702(a)(1)(A)(ii)) and to "regulate, nullify, void, prevent or prohibit, any acquisition, * * * use, transfer, withdrawal, * * * or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving" frozen Iranian assets generally (50 U.S.C. (Supp. III) 1702(a)(1)(B)). See *Chas. T. Main Int'l, Inc.* v. *Khuzestan Water & Power Authority*, *supra*, at 9.

The President, in Executive Order No. 12170, delegated to the Secretary of the Treasury all powers granted by IEEPA in order to carry out the provisions of the blocking order. See 3 U.S.C. 301. The Secretary's comprehensive Iranian Assets Control Regulations specifically prohibited any transfer of property in which an Iranian governmental entity had an interest, unless the transfer was licensed by the Secretary. See 31 C.F.R. 535.201, 535.310 (1980). Of particular significance to the instant case, the regulations provided that, "[u]nless licensed, or authorized pursuant to this part any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void

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powers under IEEPA is established as well by 22 U.S.C. 1732, which authorizes the President to use such means, not amounting to acts of war, as he may think necessary and proper to obtain the release of any United States citizen who has been unjustly deprived of his liberty by or under authority of a foreign government. See pages 52-53, *infra*.

with respect to any property in which on or since the effective date there existed an interest of Iran" (31 C.F.R. 535.203(e) (1980)).[15] Thus, the transfer or creation of an interest in frozen Iranian assets pursuant to court order was treated in the same manner under the blocking order and implementing regulations as a voluntary transfer by Iran. Moreover, on November 19, 1979, before the licenses were issued, the Secretary issued a regulation clarifying that any "licenses * * * [and] authorizations * * * may be * * * revoked at any time." 31 C.F.R. 535.805 (1980).

This specific prohibition against unlicensed attachments, garnishments, executions and other forms of judicial process with respect to Iranian property is fully consistent with the President's broad authority under IEEPA to block foreign assets generally. In barring judicial process affecting frozen assets, except as authorized by the Secretary, the President simply exercised his express authority under IEEPA to "regulate, * * * nullify, void, prevent or prohibit" any "acquisition, holding, withholding, * * * [or] withdrawal [of,] * * * or exercising any right, power, or privilege with respect to" blocked property (50 U.S.C. (Supp. III) 1702(a)(1)(B)).[16]

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[15] In addition to the specific reference in 31 C.F.R. 535.203(e) to judicial process with respect to Iranian property, the term "transfer" is defined broadly for purposes of the regulations to include the "issuance, docketing, filing, or the levy of or under any judgement [*sic*], decree, attachment, execution, or other judicial or administrative process or order, or the service of any garnishment" (31 C.F.R. 535.310 (1980)). As a result, the general prohibitions in 31 C.F.R. 535.201 and 535.203(a) (1980) against unauthorized "transfers" also apply to judicial process affecting Iranian property.

[16] As regards assets in banking institutions, the prohibition against judicial process also is within the terms of 50 U.S.C. (Supp. III) 1702(a)(1)(A), which authorizes the President to "regulate * * * or prohibit * * * transfers of credit or payments between, by, through, or to any banking institution." As noted above (see note 15, *supra*), the term "transfer" is defined broadly

The President's January 19, 1981, orders directing the transfer of Iranian assets in conformity with the Agreement with Iran (Pet. App. 21, 30)[17] fall as clearly within the terms of IEEPA as did the President's order and implementing regulations blocking those assets in the first place. Under IEEPA, the President may "*direct and compel* * * * *any* * * * transfer, withdrawal, * * * or exportation of, * * * or transactions involving, *any* property" in which a foreign country has an interest (50 U.S.C. (Supp. III) 1702(a)(1)(B)) (emphasis added). See *Chas. T. Main Int'l, Inc.* v. *Khuzestan Water & Power Authority, supra*, at 9.

2. *The President's Authority To Compel The Transfer Of Blocked Iranian Assets Is Not Affected By Attachments Of Those Assets Obtained By Petitioner After The President Issued The Blocking Order*

As explained above, the President's actions in freezing Iranian assets upon the onset of the hostage crisis and then ordering the transfer of those assets when the President entered into the Agreement with Iran are at the very core of the broad authority expressly conferred upon the President by IEEPA. Petitioner nonetheless contends (Pet. 19-25) that IEEPA does not authorize the President to order the transfer of any Iranian assets that are subject to writs of attachment it obtained against the Iranian bank defendants in federal district court in December 1979 and the first months of 1980 or the writs of execution and garnishment it obtained against

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in the regulations to include attachments and other forms of judicial process.

[17] For example, § 1-101 of Executive Order No. 12279 (46 Fed. Reg. 7919 (1981)) (Pet. App. 44) "licensed, authorized, directed and compelled" banking institutions that hold financial assets of Iran to transfer those assets, with interest from November 14, 1979, to the Federal Reserve Bank of New York, to be held or transferred as directed by the Secretary of the Treasury.

the Government of Iran and AEOI in Washington state court in March 1981 to satisfy its judgment (see Pet. App. 15-20). Petitioner's argument ignores the fact that writs of attachment, execution, or garnishment are explicitly barred by the Iranian Assets Control Regulations unless authorized by the Secretary (31 C.F.R. 535.203(e) (1980); see pages 15-16, *supra*).

The Secretary did issue a general license or authorization for judicial proceedings with respect to Iranian property (31 C.F.R. 535.504(a) (1980)), including an authorization for pre-judgment attachments, (31 C.F.R. 535.418 (1980)). As we explain in Point C (see pages 33-36, *infra*), however, post-blocking order attachments of Iranian property obtained pursuant to this general authorization in connection with litigation against Iran necessarily were contingent upon and subordinate to the President's previously invoked authority under IEEPA to compel the transfer of the property. Such attachments therefore did not create an interest in the property that could be asserted against or bind the President and that could thereby frustrate his plenary control of the property and prevent him from transferring it as the national interest requires.

Moreover, even as against Iran, the authorization for attachments explicitly *was made revocable at any time* (31 C.F.R. 535.805 (1980)), and that authorization was in fact revoked in the January 19, 1981, Executive Orders issued by President Carter.[18] IEEPA grants the President the unrestricted power to regulate frozen foreign property "by means of * * * licenses, or otherwise"

[18] In § 1-102(a) of Executive Order No. 12279 (46 Fed. Reg. 7919 (1981) (Pet. App. 44), for example, the President revoked and withdrew "[a]ll licenses and authorizations for acquiring or exercising any right, power, or privilege, by court order, attachment, or otherwise, including the license contained in [31 C.F.R. 535.504], with respect to [Iranian financial assets held by banking institutions]." See also Executive Order No. 12280, § 1-102(a) (46 Fed. Reg. 7921 (1981)) (Pet. App. 47); Executive Order No. 12281, § 1-102(a) (46 Fed. Reg. 7923 (1981) (Pet. App. 50).

(50 U.S.C. (Supp. III) 1702(a)(1)), and the President's revocation of the license he issued permitting pre-judgment restraints upon Iranian assets is an action that falls within the plain language of * * * IEEPA." *American Int'l Group, Inc.* v. *Islamic Republic of Iran*, No. 80-1779 (D.C. Cir. June 5, 1981), slip op. 18-19; see also *id.* at 22 n.10. Indeed, the ability to modify or revoke authorizations or licenses affecting frozen assets is essential in order to give the President the flexibility necessary to deal with the "unusual and extraordinary threat * * * to the national security, foreign policy, or economy of the United States" that occasioned the blocking order in the first place. See 50 U.S.C. (Supp. III) 1701(a). Thus, when the President revoked all licenses and authorizations for acquiring or exercising any right, power or privilege in Iranian property under an order of attachment or other judicial process, all pre-judgment attachments of Iranian assets obtained after the November 14, 1979, blocking order were rendered "null and void." 35 C.F.R. 535.203(a) (1980).

Furthermore, in the Executive Orders issued on January 19, 1981, the President did more than revoke the general license for the pre-judgment attachments themselves; he provided as well that "[a]ll rights, powers, and privileges" relating to Iranian properties that *derive* from such attachments and other orders in litigation issued on or after November 14, 1979, are "nullified" and that "all persons claiming any such right, power, or privilege are hereafter barred from exercising the same" (see, *e.g.*, Executive Order No. 12279, § 1-102(b) (46 Fed. Reg. 7919 (1981)) (Pet. App. 44)). This aspect of the orders is within the terms of IEEPA that authorize the President to "*nullify*, void, prevent or prohibit * * * *exercising* any right, power, or privilege" with respect to any property in which a foreign country has an interest (50 U.S.C. (Supp. III) 1702(a)(1)(B)) (emphasis added). See *Chas. T. Main Int'l, Inc.* v. *Khuzestan Water & Power Authority*, *supra*, at 9; *American Int'l Group, Inc.* v. *Islamic Republic of Iran*, *supra*, slip op.

19; *Unidyne Corp.* v. *Government of Iran*, Civil Action No. 80-1029-A (E.D. Va. Mar. 30, 1981), at 4-5.

Thus, by virtue of the Executive Orders issued on January 19, 1981, the legal basis for the attachments petitioner obtained against property of the Iranian bank defendants has been revoked; whatever rights, powers, and privileges petitioner might have acquired relating to the attached property have been nullified; and petitioner is prohibited from exercising any such rights, powers and privileges.[19] As a result—and quite aside from the fact

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[19] Many pre-judgment attachments of property of Iran and Iranian entities were invalid in any event. The Foreign Sovereign Immunities Act, 28 U.S.C. 1609, 1610(d), in general bars pre-judgment attachments because they are "foreign relations irritants." 122 Cong. Rec. 33532 (1976) (remarks of Rep. Danielson). See *Chas. T. Main Int'l, Inc.* v. *Khuzestan Water & Power Authority*, *supra*, at 13 n.12. The FSIA does keep in force, however, provisions of pre-existing international agreements, including Article XI, ¶ 4 of the 1955 Iran-United States Treaty of Amity, Economic Relations, and Consular Rights, Aug. 15, 1955, 8 U.S.T. 899, 909 T.I.A.S. No. 3853. 28 U.S.C. 1609. See *Behring Int'l, Inc.* v. *Imperial Iranian Air Force*, 475 F. Supp. 383, 391-395 (D. N.J. 1979); *New England Merchants National Bank* v. *Iran Power Generation And Transmission Co.*, 502 F. Supp. 120, 124-127 (S.D.N.Y. 1980), remanded, Nos. 740, 1099-1144, 1145-1224, 1225-1227 (2d Cir. Apr. 9, 1981), on remand, *Marschalk Co.* v. *Iran National Airlines Corp.*, No. 79 Civ. 7035 (CBM) (S.D.N.Y. June 11, 1981); *E-Systems, Inc.* v. *Islamic Republic of Iran*, 491 F. Supp. 1294, 1299-1302 (N.D. Tex. 1980). Hence, if a foreign nation by agreement has waived its immunity from pre-judgment attachments, the FSIA does not alter that situation.

Like numerous other such treaties, the Iran-United States Treaty of Amity waives immunity only for a commercial or business "enterprise * * * which is publicly owned or controlled," but not for any other type of government agency. See, *e.g.*, S. Exec. Rep. No. 5, 83d Cong., 1st Sess. 5 (1953); S. Exec. Rep. No. 5, 81st Cong., 2d Sess. 6 (1950); and cf. H.R. Rep. No. 94-1487, 94th Cong., 2d Sess. 27 (1976). The waiver of immunity in the Treaty therefore would apply to a state-owned tourist hotel, for example, but not to the Army. At a minimum, then, all current prejudgment attachments of Iranian assets are invalid under the FSIA and the Treaty except for those attachments of assets owned by government-

that those attachments did not prevent a transfer by the *President* in any event (see pages 28-31, 33-36, *infra*)—the orders of attachment issued by the District Court for the Central District of California do not prohibit the President from requiring the transfer of property subject to the attachments. Nor do they excuse persons holding that property from complying with the President's instructions. Similarly, the writs of garnishment and execution issued by the Washington state courts do not stand as an obstacle to the transfer of the affected property in that State. Those writs were obtained by petitioner after January 19, 1981, when the President revoked the general authorization for judicial proceedings with respect to blocked Iranian property.[20]

B. The President's Actions Significantly Further The Historical Purposes Of Presidential Orders Blocking Foreign Assets

The congressional purpose in authorizing blocking orders is "to put control of foreign assets in the hands

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controlled *business* enterprises. Even as to business enterprises, the district courts in *New England Merchants* and *E-Systems, Inc.*, concluded that Iran had not waived its immunity from pre-judgment attachments (502 F. Supp. at 125-127; 491 F. Supp. at 1299-1302; contra, *Behring Int'l, Inc.* v. *Imperial Iranian Air Force, supra*, 475 F. Supp. at 392-395.

This issue is developed in detail in the United States' amicus curiae brief in *Electronic Data Systems Corp.* v. *Social Security Organization of Iran*, 610 F.2d 94 (2d Cir. 1979). For the convenience of the Court, we are lodging a copy of our Second Circuit brief in the *EDS* case with the Clerk. There is, however, no need for the Court to reach the immunity question here, because petitioner's attachments were obtained pursuant to the revocable license issued by the Treasury following the President's blocking order, at a time when "the assets were within the President's control, under the umbrella of his IEEPA powers." *Chas. T. Main Int'l, Inc.* v. *Khuzestan Water & Power Authority, supra*, at 10.

[20] In any event, that general authorization never extended to the *enforcement* of a judgment with regard to Iranian property (see 31 C.F.R. 535.504(b)(2), 46 Fed. Reg. 14336 (Feb. 26, 1981)), which would have required a specific license.

of the President." *Propper* v. *Clark*, 337 U.S. 472, 493 (1949).[21] Such an order bars all subsequent transfers of, restraints on, or transactions affecting that property without the approval of the President. See, *e.g.*, *Orvis* v. *Brownell*, 345 U.S. 183, 187-188 (1953); *Zittman* v. *McGrath*, 341 U.S. 446, 448, 463-464 (1951); *Lyon* v. *Singer*, 339 U.S. 841, 842-843 (1950); *Propper* v. *Clark*, *supra*, 337 U.S. at 486; *Sardino* v. *Federal Reserve Bank of New York*, 361 F.2d 106, 112-113 (2d Cir. 1966). This permits the President to maintain the foreign assets at his disposal, unfettered to the degree he deems advisable, for use in negotiating a resolution of the national emergency that gave rise to the blocking order. See, *e.g.*, *Zittman* v. *McGrath*, *supra*, 341 U.S. at 454; *Richardson* v. *Simon*, 560 F.2d 500, 505 (2d Cir. 1977), appeal dismissed, 435 U.S. 939 (1978); *Real* v. *Simon*, 510 F.2d 557, 563 (5th Cir. 1975); cf. *Banco Nacional de Cuba* v. *Sabbatino*, 376 U.S. 398, 412 (1964).

In the present case, the initial blocking of Iranian assets after the hostages had been seized and Iran had threatened to withdraw its assets from the country served both as an official response to that hostile action and as a form of economic pressure upon Iran to release the hostages and to resolve the resultant crisis. Given the international conditions that occasioned the blocking order, the subsequent transfer of Iranian assets could be explained simply as a means of obtaining the release of the hostages, easing tensions in the unstable Persian Gulf region, and beginning the process of normalizing relations with Iran—without regard to claims of United States nationals against Iran. That such considerations could alone justify the return of frozen assets in the present case is clear from the language of IEEPA

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[21] *Propper* v. *Clark* and other opinions cited in this portion of the brief concerned blocking orders issued under the Trading with the Enemy Act (TWEA). However, the discussion in these opinions of the purposes of blocking orders is equally applicable here, because IEEPA was patterned after Section 5(b) of the TWEA, 50 U.S.C. app. 5(b). See pages 30-31, *infra*.

itself. IEEPA authorizes the President to exercise the powers it grants in order to deal with any unusual threat, which has its source in whole or substantial part outside the United States, to the "national security, foreign policy, or economy of the United States." 50 U.S.C. (Supp. III) 1701(a)(1). The transfer of Iranian assets in order to obtain the release of the hostages, ease tensions, and restore relations with Iran surely is calculated to meet the threat to the "national security" and "foreign policy" of the United States presented by the circumstances surrounding the hostage crisis.[22]

However, the President's orders freezing Iranian assets and subsequently directing the transfer of those assets also significantly furthered an additional purpose often served by blocking orders: providing for the settlement of claims of United States nationals against the country whose assets were frozen. *Banco Nacional de Cuba* v. *Sabbatino*, *supra*, 376 U.S. at 412, 431; *Zittman* v. *McGrath*, *supra*, 341 U.S. at 454; *Richardson* v. *Simon*, *supra*, 560 F.2d at 505; *Real* v. *Simon*, *supra*, 510 F.2d at 563; *Nielsen* v. *Secretary of the Treasury*, 424 F.2d 833, 840-841 (D.C. Cir. 1970). Congress recognized when it enacted IEEPA that blocking orders are "generally the most effective means of achieving settlement of U.S. claims" (H.R. Rep. No. 95-459, 95th Cong., 1st Sess. 17 (1977); see also *id.* at 6, 12) and, indeed, it made specific provision in IEEPA itself for continuation of freezing controls even after the termination of a national emergency where necessary because of outstanding claims. 50 U.S.C. (Supp. III) 1706(a)(1). See also *Emergency Controls on International Economic Transactions: Hearings on H.R. 1560 and H.R. 2382 before the Subcomm. on International Economic Policy and Trade of the House*

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[22] Thus, even if a claimant is excluded from the arbitral tribunal established by the Agreement with Iran, IEEPA authorizes the return of assets subject to that claimant's attachment. See, *e.g.*, *American Bell Int'l, Inc.* v. *Islamic Republic of Iran*, No. 80-321 (D.D.C. June 11, 1981), petition for cert. before judgment pending, No. 80-2111 (filed June 15, 1981).

Comm. on International Relations, 95th Cong., 1st Sess. 99, 108, 113, 119, 137-138, 147, 182, 213, 217-218, 277-279 (1977) [hereinafter "House IEEPA Hearings"]; *Amending the Trading With the Enemy Act: Hearing on H.R. 7738 Before the Subcomm. on International Finance of the Senate Comm. on Banking, Housing, and Urban Affairs*, 95th Cong., 1st Sess. 6 (1977).

Recognition of a power in the courts, through orders of attachment or otherwise, to prevent a disposition of foreign assets that the President determines to be in the national interest would fly in the face of the congressional purpose of placing complete control of such assets in the President and would substantially diminish the President's stature as the "sole organ of the federal government in the field of international relations" (*United States* v. *Curtiss-Wright Export Corp.*, 299 U.S. 304, 320 (1936)). In the present case, for example, this would have made most if not all Iranian assets unavailable, for an indefinite period, for use in the resolution of the hostage crisis at the very time when swift and decisive action was compelled. As explained above, however, Congress was aware of these concerns and, by enacting IEEPA, plainly authorized the President to direct the transfer of property against which post-blocking order attachments had been obtained.

C. The President's Actions Are Fully Consistent With Section 5(b) Of The Trading With The Enemy Act, After Which IEEPA Was Patterned

1. *Interpretations Of Section 5(b) Of The TWEA Support The President's Actions Under IEEPA*

As petitioner concedes (Pet. 21), the operative provision of IEEPA, 50 U.S.C. (Supp. III) 1702(a)(1), is drawn directly from and "basically parallels" Section 5(b)(1) of the Trading with the Enemy Act (TWEA), 50 U.S.C. app. 5(b)(1). See H.R. Rep. No. 95-459, 95th Cong., 1st Sess. 14-15 (1977). Therefore, with certain limitations not directly pertinent here, the President

has the same broad blocking powers under IEEPA that he had under the TWEA.[23]

When Congress incorporates provisions of a prior law in this fashion, it may be presumed to have intended that interpretations of the prior law would apply to the new one as well. *Lorillard* v. *Pons*, 434 U.S. 575, 581 (1978). This intention is particularly evident here, in view of the House and Senate Committees' exhaustive study of Section 5(b) of the TWEA. See H.R. Rep. No. 95-459, *supra*, at 2-9; S. Rep. No. 95-466, 95th Cong., 1st Sess. 1 (1977).

The incorporation in IEEPA of the provisions of Section 5(b) of the TWEA is significant for two reasons. First, the Iranian Assets Control Regulations were pat-

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[23] *See also Revision of Trading With the Enemy Act, Markup Before the House Comm. on International Relations*, 95th Cong., 1st Sess. 4 (Comm. Print 1977). Congress did impose certain limitations on the President's power under IEEPA that were not included in Section 5(b) of the TWEA. Thus, under IEEPA, the President may not "vest" foreign property—*i.e.*, place ownership in the United States—as he could under the TWEA, nor may he seize records or regulate purely domestic transactions. See S. Rep. No. 95-466, 95th Cong., 1st Sess. 5 (1977); H.R. Rep. No. 95-459, *supra*, at 3-5, 10-11, 15 & n. 23. See also 50 U.S.C. (Supp. III) 1702(b)(1) and (2) (barring regulation of non-economic aspects of international relations). The Act also imposes procedural requirements on the exercise of the powers it confers, including a requirement of reports to Congress (50 U.S.C. (Supp. III) 1703(b)) and a tailoring of the powers exercised to the threat posed (50 U.S.C. (Supp. III) 1701(b)). None of these changes, however, narrowed the President's basic authority to block foreign property and license transactions affecting it where, as here, the declared emergency relates precisely to the nation whose assets are blocked. Petitioner's suggestion (Pet. 13, 21-24) that, for present purposes, the President's powers under IEEPA with respect to Iranian property are more limited than those under Section 5(b) of the TWEA is therefore wholly without merit. So, too, is the same suggestion by the district court in *Marschalk* v. *Iran National Airlines Corp.*, No. 79 Civ. 7035 (CBM) (S.D.N.Y. June 11, 1981), at 69-70. Indeed, the selectivity Congress exhibited in modifying certain provisions of Section 5(b) of the TWEA when it enacted IEEPA underscores Congress' intention to incorporate intact the substantive provisions of Section 5(b) that were not altered. *Lorillard* v. *Pons*, 434 U.S. 575, 582 (1978).

terned after the assets control regulations issued under Section 5(b) of the TWEA, for property of the People's Republic of China, North Korea, Vietnam, Cambodia and Cuba, that were in effect when IEEPA was enacted. Indeed, the provisions of the Iranian regulations providing that any attachment or other judicial process is "null and void" unless authorized by the Secretary, providing a general license for judicial proceedings (short of judgment and execution) with respect to Iranian property, and providing that all licenses and authorizations are revocable at any time are virtually identical to parallel provisions in the regulations in effect under the TWEA when IEEPA was enacted. See 31 C.F.R. 500.203(e), 500.504, 500.805, 515.203(e), 515.504, and 515.805 (1976).

The reports of the House and Senate Committees that considered IEEPA discuss the assets control regulations then applicable to the People's Republic of China, North Korea, Vietnam, Cambodia, and Cuba. H.R. Rep. No. 95-459, *supra*, at 6 & nn.17-21; S. Rep. No. 95-466, *supra*, at 3. See also *House IEEPA Hearings*, *supra*, at 99, 108, 147, 223, 230, 233.[24] Thus, when Congress incorporated into IEEPA the asset control authority under Section 5(b) of the TWEA, it must be held to have granted the President the same broad authority that theretofore had been exercised in the regulations under the TWEA—including the power to bar attachments and

[24] See also Subcomm. on International Trade and Commerce of the House Comm. on International Relations, 94th Cong., 2d Sess., *Trading With the Enemy: Legislative and Executive Documents Concerning Regulation of International Transactions in Time of Declared National Emergency* 557 *et seq.* (Comm. Print 1976) (reproducing these regulations in a collection of documents compiled in connection with the Subcommittee's "thorough review" (*id.* at iii) of Section 5(b) of the TWEA). Although the Committees expressed some reservation about whether certain restrictions on economic transactions with some of these countries were warranted under existing international conditions (see, *e.g.*, Rep. No. 95-459, *supra*, at 9-10), they did not question the scope of the President's power with respect to blocked property, as reflected in the assets control regulations, where the President's powers were properly invoked.

other judicial process affecting the frozen property and, if the President so elects, to issue revocable licenses permitting attachments and other judicial process.

The fact that Congress sculpted IEEPA out of Section 5(b) of the TWEA is also significant because of the decisions of this Court confirming the President's broad authority under Section 5(b) with respect to frozen property against which orders of attachment or similar judicial process had been entered. The Court's decision in *Propper* v. *Clark*, *supra*, 337 U.S. at 482-486, for example, establishes that a license from the Executive is required before a judicial order may effect a transfer of or create a legally enforceable interest in frozen assets.[25] See also *Chas. T. Main Int'l, Inc.* v. *Khuzestan Water & Power Authority*, *supra*, at 9-10.

Similarly, in *Orvis* v. *Brownell*, 345 U.S. 183 (1953), the Court made clear that, although the freezing program in effect during World War II recognized attachment liens insofar as they determined relationships between the creditor and the foreign debtor (see *Zittman* v. *McGrath*, 341 U.S. 446 (1951)), "it did not permit the transfer of a property interest in the blocked funds which could be asserted against the [Alien Property] Custodian" (345 U.S. at 187). This was so because, under the freezing program, an attachment obtained in litigation be-

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[25] As the Second Circuit stated in *Propper*:

> [T]he judicial process cannot, without a license or other authorization from the Secretary of the Treasury, operate to transfer or create any interest in blocked property.
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> There is no cogent reason for excepting transfers by judicial process. To allow the exception would be to furnish a means of evasion by which the impact of freezing controls could be avoided by recourse to judicial proceedings.
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> * * * * *
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> [T]he prohibition of unlicensed transfers * * * is universal.

Clark v. *Propper*, 169 F.2d 324, 327 (2d Cir. 1948), aff'd, 337 U.S. 472 (1949). See also *Chase Manhattan Bank* v. *United China Syndicate, Ltd.*, 180 F. Supp. 848 (S.D.N.Y. 1960).

tween the claimant and foreign national [26] did not create a right or privilege in the blocked property greater than that which the owner of the property could confer by voluntary transfer without first obtaining a specific license from the federal government.[27] The Court observed (*ibid.*):

> Realistically, these reservations deprive the assent [to attachments] of much substance; but that should have been apparent on its face to those who chose to litigate. The opportunity to settle their accounts with the enemy debtor was all that the permission to attach granted.

This accommodation of the interests of the claimants was necessarily limited because "'the Federal Government must have its hands unfettered in using freezing control'" (*Zittman* v. *McGrath*, *supra*, 341 U.S. at 456, quoting the government's brief amicus curiae in *Commission for Polish Relief* v. *Banca Nationala a Rumaniei*, 288 N.Y. 332, 43 N.E. 2d 345 (1942)).[28]

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[26] Some assent to attachment was thought to be necessary for litigation to proceed, because the foreign debtor was rarely amenable to personal service and any action therefore had to be in the nature of a *quasi in rem* proceeding preceded by an attachment of the property within the jurisdiction of the court. *Zittman* v. *McGrath*, *supra*, 341 U.S. at 457. The post-blocking order attachments and other restraints imposed on Iranian assets are of no jurisdictional significance in the pending Iranian cases, however, because 28 U.S.C. 1330(a) provides for jurisdiction only of *in personam* actions against foreign states. *American Int'l Group, Inc.* v. *Islamic Republic of Iran*, *supra*, slip op. 21-22; see also 28 U.S.C. 1609 and 1610(d)(2).

[27] See, *e.g.*, *Propper* v. *Clark*, *supra*, 337 U.S. at 485; *Zittman* v. *McGrath*, *supra*, 341 U.S. at 454.

[28] The attempt by the district court in *Marschalk Co.* v. *Iran National Airlines Corp.*, No. 79 Civ. 7035 (CBM) (S.D.N.Y. June 11, 1981) to distinguish *Orvis* (at 71-72) therefore is unavailing. In *Orvis*, as under the Iranian regulations, consent was given for pre-judgment attachments *only* for purposes of litigation between the claimant and the foreign debtor. Under neither set of regulations did the Secretary consent to a "transfer" of frozen

These same principles apply under the Iranian assets program. Under the Iranian regulations, the transfer of or creation of a legally enforceable interest in frozen property pursuant to court order treated in the same manner as a voluntary transfer by Iran (see pages 15-16, *supra*)—as indeed it must be if the President is to have the flexibility he requires to direct the transfer of frozen Iranian assets as the national interest requires. Thus, a post-blocking order of attachment of Iranian assets was only an attachment of Iran's *contingent* power (*i.e.*, contingent upon the Secretary's authorization) to transfer its interest in the property to the claimant. Because the claimant could obtain no greater rights with respect to the property than Iran itself retained, the attachment gave the claimant an interest in the property that likewise was contingent upon the Secretary's subsequent licensing of a transfer of the property. *Zittman* v. *McGrath*, *supra*, 341 U.S. at 455. " 'The value of such an interest is of course problematical. Whether it is worthless or worth full value will depend upon whether the transfer sought is in accordance with the Government's policies in administering freezing control' " (*Zittman* v. *McGrath*, *supra*, 341 U.S. at 456, quoting the government's brief amicus curiae in *Commission for Polish Relief* v. *Banca Nationala a Rumaniei*, *supra*).

It is clear, then, that an attachment giving a claimant an interest in blocked Iranian property that was contingent upon and subordinate to the exercise of the President's paramount and plenary powers under IEEPA to license or direct the property in the manner he believes will best deal with the threat that gave rise to the national emergency did not and could not restrain the President in the exercise of those powers, absent express consent by the President. *American Int'l Group, Inc.* v. *Islamic Republic of Iran*, *supra*, slip op. 20, 22. No such

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property—*i.e.*, creation of an interest in alien property—that could be asserted against the federal government.

consent was given here, and it would have been inconsistent with the purposes of the freezing program to give consent. Accordingly, even if the President had not revoked licenses for pre-judgment attachments and barred claimants from exercising rights under them (see pages 24-27, *supra*), the post-blocking orders of attachment would not have barred the President from ordering the transfer of attached Iranian property in the national interest pursuant to the powers he reserved under IEEPA. *American Int'l Group, Inc.* v. *Islamic Republic of Iran*, *supra*, slip op. 20, 22; *Chas. T. Main Int'l, Inc.* v. *Khuzestan Water & Power Authority*, *supra*, at 11-12.[29]

2. *Sections 9(a) and 34 of the TWEA Do Not Suggest That The President Cannot Order The Transfer Of Frozen Assets*

Despite the broad powers granted to the President under Section 5(b) of the TWEA, petitioner argues (Pet. 22-24) that the President would be barred under the TWEA from returning foreign assets rather than satisfying the claims of United States nationals, because claimants are entitled to file claims with the Executive under Sections 9(a) and 34 of the TWEA and to have their claims paid out of assets held by the Executive. Accordingly, petitioner argues, IEEPA cannot be thought

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[29] Because petitioner's attachments and writs of garnishment and execution were obtained, at most, were revocable and were, in any event, contingent upon and subordinate to the President's exercise of his plenary powers over the alien property under IEEPA, no taking of a property interest occurred when the President exercised his reserved power to revoke the licenses and to direct the transfer of the assets. See *Chas. T. Main Int'l, Inc.* v. *Khuzestan Water & Power Authority*, *supra*, at 12-13; *American Int'l Group, Inc.* v. *Islamic Republic of Iran*, *supra*, slip op. 39-40; see also *United States* v. *Fuller*, 409 U.S. 488 (1973); *Bridge Co.* v. *United States*, 105 U.S. 470, 481-482 (1882); *Acton* v. *United States*, 401 F.2d 896 (9th Cir. 1968), cert. denied, 393 U.S. 1121 (1969).

to authorize the President to return frozen assets to a foreign country rather than satisfying the claims of domestic claimants. This argument reflects a serious misunderstanding of the structure and history of the TWEA.

Section 9(a) of the TWEA permitted a person who was not an enemy alien and who claimed that an enemy owed him a debt to apply to the Alien Property Custodian for satisfaction of that debt from assets vested in the Custodian. If the Custodian denied the claim, the claimant could bring suit in district court to recover. In *Markhan* v. *Cabell*, 326 U.S. 404, 409-410 (1945), this Court held that a person could file a claim under Section 9(a) to recover on a debt where the assets had been vested in the Custodian. But the Court emphasized that, where foreign assets were only *blocked* or *frozen*, as in the case of Iranian property, if the Secretary "refuses a license permitting payment of creditors out of blocked funds, neither the creditor nor the owner has any remedy as a matter of right under the Act" (326 U.S. at 410). See also *Logan* v. *Secretary of State*, 553 F.2d 107 (D.C. Cir. 1976). Thus, *Markham* further reinforces the conclusion that the President may direct the transfer of Iranian assets despite the claims of United States nationals.

Moreover, after *Markham* was decided, Congress added Section 34 to the TWEA (50 U.S.C. App. 34) to provide that debt claims thereafter could be satisfied out of vested assets only on the basis of an equitable distribution to *all* claimants, rather than on a first-come-first-served basis under Section 9(a). Act of Aug. 8, 1946, ch. 878, Section 1, 60 Stat. 925; see *Honda* v. *Clark*, 386 U.S. 484, 487, 495-496 (1967). Section 34(i) of the TWEA now provides that the filing of a claim under Section 34 is the exclusive remedy for satisfaction of a debt; claims and suits on debts under Section 9(a) are barred. S. Rep. No. 1839, 79th Cong., 2d Sess. 9 (1946);

H.R. Rep. No. 2398, 79th Cong., 2d Sess. 15 (1946).[30] Reference to the now-superseded provision for satisfaction of debt claims under Section 9(a) therefore lends no support to petitioner's position.

Claimants can, of course, recover on a debt owed by enemy aliens under Section 34 of the TWEA, but only where foreign property has been *vested* in the United States. The power to vest foreign property was deliberately withheld from the President under IEEPA. IEEPA therefore furnishes no *right*, comparable to that in Section 34 of TWEA with respect to vested assets, to assert a claim against frozen assets. See *Markham* v. *Cabell*, *supra*. In addition, petitioner does not seek through its attachments and writs of execution and garnishment to participate on a pro rata or other equitable basis in Iranian assets frozen in this country, in a manner analogous to that permitted under Section 34. It instead asserts a priority claim to be satisfied in full out of the assets against which judicial orders have been entered, in derogation of the rights of other claimants who have not yet filed suit or obtained similar judicial orders or who might submit their claims to the Iran-United States Claims Tribunal. The settlement arrangement negotiated by the President, on the other hand, provides for full satisfaction of all claims that are found by the Tribunal to be within its jurisdiction and meritorious.

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[30] Section 9(a) remains available for the filing of claims seeking the *return* of vested property in which a non-enemy alien claims an interest.

II. THE PRESIDENT VALIDLY EXERCISED HIS AUTHORITY TO SETTLE CLAIMS OF UNITED STATES NATIONALS AGAINST A FOREIGN COUNTRY BY PROVIDING FOR THE PRESENTATION OF SUCH CLAIMS TO THE IRAN-UNITED STATES CLAIMS TRIBUNAL ESTABLISHED UNDER THE AGREEMENT WITH IRAN

The President possesses and has long exercised the authority under the Constitution to settle the claims of American nationals against a foreign country. The Executive power to settle claims has been recognized and approved by Congress and the courts and has not been divested by any action of Congress. To the contrary, with respect to the Agreement with Iran, the President's constitutional authority to settle claims through arbitration is reinforced by treaty and statute.

As implemented by Executive Order and regulations, the provision in the Agreement with Iran for the submission of claims to binding arbitration fashions a new rule of substantive law that domestic courts are required to apply to cases pending before them by staying further litigation of claims that may be presented to the arbitral tribunal. Accordingly, the district court correctly denied petitioner's motion for a preliminary injunction seeking to prevent implementation of Executive Order No. 12294, which suspended the domestic effect of claims against Iran that may be presented to the Iran-United States Claims Tribunal, and correctly dismissed the complaint for failure to state a claim upon which relief could be granted.

A. The President Acted Within His Authority In Providing For Settlement Of Claims Of United States Nationals Against Iran

1. *The President's Constitutional Power To Settle Claims Has Been Uniformly Recognized By All Three Branches Of Government*

Not infrequently in affairs between nations, outstanding claims by nationals of one country against the government of another country are "sources of friction" between the two sovereigns. *United States* v. *Pink*, 315 U.S. 203, 225 (1942). Depending on the circumstances, this friction may range from a minor irritant in the course of otherwise amicable dealings to a serious "impediment to resumption of friendly relations" (*ibid.*)—or, indeed, to any relations at all. To resolve these difficulties, nations have frequently entered into agreements settling the claims of their respective nationals. So entrenched is this experience that, as the First Circuit observed, "[i]nternational agreements settling claims by nationals of one state against the government of another 'are established international practice reflecting traditional international theory.'" *Chas. T. Main Int'l, Inc.* v. *Khuzestan Water & Power Authority*, *supra*, at 16, quoting L. Henkin, *Foreign Affairs and the Constitution* 262 (1972). See also *Ozanic* v. *United States*, 188 F.2d 228, 231 (2d Cir. 1951) (L. Hand, J.); see generally R. Lillich & B. Weston, *International Claims: Their Settlement by Lump-Sum Agreements*, 2 Vols. (1975).

As a sovereign, the United States requires, and possesses, the power to deal with other nations as an equal. *United States* v. *Curtiss-Wright Export Corp.*, 299 U.S. 304, 318 (1936). Consistent with this principle and the established international practice referred to above, the United States repeatedly has exercised its sovereign authority to settle the claims of its nationals against other countries—even, occasionally, by renouncing those

claims.[31] Sometimes this has been done by treaty. See, *e.g.*, *United States ex rel. Boynton* v. *Blaine*, 139 U.S. 306 (1891). But as the District of Columbia Circuit concluded, there has also been "a long-standing practice of settling private American claims against foreign governments through executive agreements." *American Int'l Group, Inc.* v. *Islamic Republic of Iran*, *supra*, slip op. 28; see also *Chas. T. Main Int'l, Inc.* v. *Khuzestan Water & Power Authority*, *supra*, at 16-19.[32]

Congress has acknowledged this long-standing practice of settlement of claims by Executive Agreement[33] and

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[31] As early as 1800, the United States, in exchange for release from a treaty obligation to come to the aid of France, renounced the claims of American nationals arising from French seizure of their vessels. See *Blagge* v. *Balch*, 162 U.S. 439 (1896); *Gray* v. *United States*, 21 Ct. Cl. 340 (1886).

[32] At least since the case of the "Wilmington Packet" in 1799, Presidents have exercised the power to settle claims of United States nationals by Executive Agreement. Lillich, *The Gravel Amendment to the Trade Reform Act of 1974: Congress Checkmates a Presidential Lump Sum Agreement*, 69 Am. J. Int'l L. 837, 844 (1975). That case "set a precedent which was to be followed in a long line of subsequent claims, settlement of which has been sought by the authority of the Executive alone" (W. McClure, *International Executive Agreements* 44 (1941)). In fact, during the period 1817-1917, "no fewer than eighty executive agreements were entered into by the United States looking toward the liquidation of claims of its citizens * * *" (*id.* at 53). See also 14 M. Whiteman, *Digest of International Law* 247 (1970); 2 C. Hyde, *International Law Chiefly as Interpreted and Applied by the United States* 1409 (2d rev. ed. 1945); 5 G. Hackworth, *Digest of International Law* 403 (1943); 12 M. Whiteman, *Digest of International Law* 1267 (1971); Foster, *The Treaty-Making Power Under the Constitution*, 11 Yale L.J. 69 (1901); McDougal & Lans, *Treaties and Congressional-Executive or Presidential Agreements: Interchangeable Instruments of National Policy*, 54 Yale L.J. 181, 268 (1945).

[33] See, *e.g.*, 79 Cong. Rec. 969-971 (1935) (listing 40 Executive Agreements); 109 Cong. Rec. 21591-21595, 25148-25149 (1963) (debate on proposals, which were never enacted, to express the sense of Congress that settlement agreements be submitted to the

has approved and facilitated the implementation of such settlements on a number of occasions. For example, in 22 U.S.C. 1623(a)[34] Congress conferred jurisdiction on the International Claims Commission[35] to determine claims of nationals of the United States "included within the terms of any claims agreement * * * concluded between the Government of the United States and a foreign government * * * providing for the settlement and discharge of claims * * * of nationals of the United States against a foreign government, arising out of the nationalization or other taking of property, by the agreement of the Government of the United States to accept from that government a sum in en bloc settlement thereof." See also 31 U.S.C. 547; 22 U.S.C. 1643-1643k; 1644-1644m.

Congress also recognized the President's claims-settlement authority in 1977 when it enacted IEEPA, which enables the President to freeze foreign assets in order to use them as negotiating leverage for the settlement of claims. See 50 U.S.C. (Supp. III) 1706(a)(1); pages 29-30, *supra*. Such congressional recognition also is manifest from recent legislation establishing or amending programs for claims against the German Democratic Republic, the People's Republic of China (PRC), and Vietnam, which are premised on claims settlement agreements

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Senate for its advice and consent). In one instance, Congress enacted legislation (Trade Act of 1974, 19 U.S.C. 2438) to force the Executive to renegotiate a particular settlement agreement with Czechoslovakia. See Lillich, *The Gravel Amendment to the Trade Reform Act of 1974: Congress Checkmates a Presidential Lump Agreement*, 69 Am. J. Int'l L. 837, 839-844 (1975); see also Act of Aug. 2, 1977, Pub. L. No. 95-86, Section 708, 91 Stat. 444 (claims against Cuba). Congress has therefore demonstrated its ability to intervene in the Executive's claims-settlement process, but it has rarely done so.

[34] This provision was enacted in 1950. Act of Mar. 10, 1950, ch. 54, Section 4, 64 Stat. 13.

[35] Now the Foreign Claims Settlement Commission. See Reorg. Plan No. 1 of 1954, 68 Stat. 1279.

negotiated or to be negotiated by the Executive. See pages 61-64, *infra*. And most recently, with respect to the Iranian Agreement itself, the Senate Committee on Foreign Relations expressed the view that the Iran-United States Claims Tribunal established by the Agreement "is of vital importance to the United States" and "urge[d] the Department [of State] to devote sufficient personnel and resources to enable the United States to represent the interests of U.S. citizens before the tribunal in an effective and expeditious manner" (S. Rep. No. 97-71, 97th Cong., 1st Sess. 5 (1981)). Thus, Presidential claims settlement represents "a systematic, unbroken, executive practice, long pursued to the knowledge of the Congress and never before questioned, * * * making as it were such exercise of power part of the structure of our government." *Youngstown Sheet & Tube Co.* v. *Sawyer*, *supra*, 343 U.S. at 610-611 (Frankfurter, J., concurring).

This Court, too, has confirmed the President's claims-settlement authority, most fully in *United States* v. *Pink*, 315 U.S. 203 (1942).[36] There, the Court upheld the validity of the Litvinov Assignment, which was part of an Executive Agreement accomplished through the exchange of diplomatic notes. Under the Agreement, the Soviet Union assigned to the United States amounts owed to it by American nationals, including assets of United States branches of Russian companies that had been nationalized by the Soviet Government. These assigned funds were then to be used to pay the outstanding claims of American nationals against Russia. The Court

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[36] The Court's awareness in *Pink* of the established precedent for the settlement of claims by the Executive is evidenced by its citation (315 U.S. at 230) to Moore, *Treaties and Executive Agreements*, 20 Pol. Sci. Q. 385, 403-417 (1905) (reprinted at 62 Cong. Rec. 13063-13068 (1922)), which discusses the precedents at length. See also *Banco Nacional de Cuba* v. *Sabbatino*, *supra*, 376 U.S. at 431; *Z. & F. Assets Realization Corp.* v. *Hull*, 311 U.S. 470, 480 (1941).

recognized that the non-payment of these claims had for years been one of the barriers to recognition of the Soviet regime by the Executive, and concluded that the "[p]ower to remove such obstacles to full recognition as settlement of claims of our nationals * * * certainly is a modest implied power of the President who is the 'sole organ of the federal government in the field of international relations' " (315 U.S. at 229, quoting *United States* v. *Curtiss-Wright Export Corp.*, *supra*, 299 U.S. at 320). The Court explained (315 U.S. at 229-230) that

> [e]ffectiveness in handling the delicate problems of foreign relations requires no less. Unless such a power exists, the power of recognition might be thwarted or seriously diluted. No such obstacle can be placed in the way of rehabilitation of relations between this country and another nation, unless the historic conception of the powers and responsibilities of the President in the conduct of foreign affairs * * * is to be drastically revised. It was the judgment of the political department that full recognition of the Soviet Government required the settlement of all outstanding problems including the claims of our nationals. Recognition and the Litvinov Assignment were interdependent. We would usurp the executive function if we held that that decision was not final and conclusive in the courts.

Given the concurrence of the three Branches of government on this question of Executive authority, "[t]hat the President's control of foreign relations includes the settlement of claims is indisputable" (*id.* at 240) (Frankfurter, J., concurring).

2. *The President Validly Exercised His Claims Settlement Authority In This Case*

a. The considerations of Executive flexibility and diplomatic delicacy that formed a part of the background for the Litvinov Assignment were present as well in the period preceding the Agreement with Iran, but with far

greater force and urgency. Here, as in *Pink*, the President's settlement of claims "was not an isolated event but a necessary incident to the resolution of a dispute between our nation and another." *Chas. T. Main Int'l, Inc.* v. *Khuzestan Water & Power Authority*, *supra*, at 22. Indeed, as the First Circuit observed, "[t]his case well illustrates the imperative need to preserve a presidential flexibility sufficient to diffuse an international crisis, in order to prevent the crisis from escalating or even leading to war" (*id.* at 19).[37] In this respect, the Agreement with Iran properly serves the foreign policy and national security of the United States as a whole, as well as the interests of United States claimants generally. See *Banco Nacional de Cuba* v. *Sabbatino*, *supra*, 376 U.S. at 431; *United States* v. *Pink*, *supra*, 315 U.S. at 227.[38] And here, as in *Pink*, the President's determination, in the overall context of the Iranian crisis, about which claims to settle and the manner in which settlement would be achieved is "final and conclusive in the courts" (315 U.S. at 230).

b. Typically, the Executive has utilized several methods to settle claims. First, in direct negotiations with the other country, the Executive has espoused multiple American claims arising out of specific events or covering a specific period of time. Often it has accepted

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[37] Although the Iranian crisis presented a particularly compelling occasion for the exercise of the President's authority to settle claims, that authority has been recognized as well where the United States has friendly relations with the other nation, in order to maintain "continued mutual amity between [this] nation and other powers." *Ozanic* v. *United States*, 188 F.2d 228, 231 (2d Cir. 1951). See *Ex parte Peru*, 318 U.S. 578, 587 (1943); *United States* v. *Pink*, *supra*, 315 U.S. at 240 (Frankfurter, J., concurring).

[38] See also 2 C. Hyde, *supra* note 32, at 890-891; 12 M. Whiteman, *supra* note 32, at 1217, 1224; William A. Parker *(United States* v. *Mexico)*, *Opinions of Commissioners under the Convention Concluded September 8, 1923 between the United States and Mexico* 35, 36 (1927); 6 J. Moore, *A Digest of International Law* 1026-1027 (1906).

a lump sum payment in full settlement of aggregated claims, without agreeing with the other country as to the value of each individual claim.[39] In other settlements there has been some agreement on the amount payable for each individual claim or category of claims. The Iranian Agreement, with respect to payments to banking syndicates, falls into this category. See page 7 & note 8, *supra*.

A third method employed by the Executive in settling claims of United States nationals has been to provide for their submission to international arbitration by a claims commission.[40] Throughout our history, many claims of

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[39] For example, in the recent United States-People's Republic of China Settlement, May 11, 1979, T.I.A.S. No. 9306, the United States agreed to accept $80.5 million in full settlement of certain claims of American nationals against the PRC. Numerous other substantial lump sum agreements, providing for the full settlement of categories of individual claims, have also been concluded, particularly during the period since the Second World War. See, *e.g.*, United States-Egypt Claims Settlement through Exchange of Notes, May 19, 1979, T.I.A.S. No. 9589; United States-Hungary Claims Settlement, Mar. 6, 1973, 24 U.S.T. 522, T.I.A.S. No. 7569; United States-Bulgaria Claims Settlement, July 2, 1963, 14 U.S.T. 969, T.I.A.S. No. 5387; United States-Poland Claims Settlement, July 16, 1960, 11 U.S.T. 1953, T.I.A.S. No. 4545; United States-Rumania Claims Settlement, Mar. 30, 1960, 11 U.S.T. 317, T.I.A.S. No. 4451; United States-Yugoslavia Claims Settlement, July 19, 1948, 12 Bevans 1277, T.I.A.S. No. 1803. See generally R. Lillich & B. Weston, *International Claims: Their Settlement by Lump-Sum Agreements*, 2 Vols. (1975).

[40] This Court often has had occasion to consider the use of arbitration as an accepted method for the settlement of international claims. For example, commissions to resolve outstanding claims were established by Treaty with the United Kingdom, May 8, 1871, 12 Bevans 170, T.S. No. 133 (see, *e.g.*, *Williams* v. *Heard*, 140 U.S. 529 (1891); *United States* v. *Weld*, 127 U.S. 51 (1888)); by Agreement with Spain, Feb. 11-12, 1871, 11 Bevans 540, T.S. No. 328-1 (see, *e.g.*, *United States ex rel. Angarica* v. *Bayard*, 127 U.S. 251 (1888)); and by Treaty with Mexico, July 4, 1868, 9 Bevans 826, T.S. No. 212, and Apr. 11, 1839, 9 Bevans 783, T.S. No. 205 (see, *e.g.*, *United States ex. rel. Boynton* v. *Blaine*, 139 U.S. 306 (1891); *Peugh* v. *Porter*, 112 U.S. 737 (1885);

United States nationals have been remitted to arbitration by Executive Agreement.[41] Thus, the provision in the Iranian Agreement for arbitration of claims against Iran is fully consistent with historical practice.[42]

Alling v. *United States*, 114 U.S. 562 (1885); *Williams* v. *Oliver*, 53 U.S. (12 How.) 111 (1851)). See generally A. Stuyt, *Survey of International Arbitrations* 1794-1970 (1972); 3 M. Whiteman, *Damages in International Law* Appendix B (1943); R. Lillich, *International Claims: Their Adjudication by National Commission* 6-7 (1962); J. Moore, *History and Digest of the International Arbitrations to Which the United States Has Been a Party* (1898).

[41] See 2 C. Hyde, *supra* note 32, at 1409; Moore, *supra* note 36, 20 Pol. Sci. Q. at 403-417); S. Crandall, *Treaties: Their Making and Enforcement* 109-111 (1916); 79 Cong. Rec. 969-971 (1935) (listing 40 Executive Agreements, entered into between 1842 and 1931, providing for arbitration of claims against foreign governments).

[42] Past arbitrations have involved many of the same elements as are present in the arbitration of United States claims against Iran. For instance, past arbitrations have often involved many thousands of claims—over 20,000 were presented to the German-American Mixed Claims Commission established in 1922. See *Final Report of H.H. Martin, Acting Agent of the United States Before the Mixed Claims Commission: United States and Germany* 94 (1941). Furthermore, arbitrations have involved many different kinds of claims: *e.g.*, expropriation, personal injury, war-related damage, and wrongful detention of vessels. In particular, they have included contract claims, such as those involved in this case. It was observed in 1915 that "the Department of State has generally been willing to submit contract claims to the adjudication of international commissions, and these commissions have in general exercised jurisdiction over contract claims as over other claims. * * * Where jurisdiction has been exercised by mixed commissions, as is the general rule, the contract has been examined as would any other instrument open to judicial construction." E. Borchard, *The Diplomatic Protection of Citizens Abroad* 296, 299 (1925) (citing numerous examples). See also 5 G. Hackworth, *supra*, at 618-623; 2 C. Hyde, *supra* note 32, at 998-1004; J. Moore, *supra* note 40, at 3425-3590. Finally, in some arbitrations, claimants themselves have appeared directly before the arbitral tribunal, as many will before the Iran-United States Claims Tribunal. See E. Borchard, *supra*, at 358.

As a practical matter, arbitration may be more advantageous to claimants than the President's acceptance of a lump sum settlement, because it offers the prospect of full recovery if a claim is found to be meritorious. The Agreement with Iran provides for full recovery on such claims (Decl. I, ¶ 7; Decl. II, Art. IV, ¶ 3; Pet. App. 25, 32). In contrast, post-war lump-sum agreements have, on the average, provided less than 50% recovery after the lump-sum payment has been distributed to satisfy all claims found by the Foreign Claims Settlement Commission to be meritorious. See *Status of Claims Settlements with Nonmarket Countries, East German Claims Bill: Hearings on H.R. 14642 Before the Subcomm. on International Trade and Commerce of the House Comm. on International Relations*, 94th Cong., 2d Sess. 9-12 (1976). Arbitration also has the diplomatic advantage of allowing the two nations to reach general agreement to resolve their differences, while deferring resolution of individual disputes and subsidiary issues to an impartial body. This is particularly beneficial in circumstances, as here, that require immediate resolution.

c. The provisions making arbitration the *exclusive* procedure for resolution of claims subject to the jurisdiction of the Iran-United States Claims Tribunal also are consistent with established principles governing Executive settlements.[43] So, too, is the provision that all arbitration determinations by the Tribunal on the merits, either for or against the claimant, shall be final and binding. Decl. II, Art. IV, ¶ 1 (Pet. App. 32); Executive Order No. 12294, § 4 (Pet. App. 53).

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[43] The Agreement with Iran (Decl. II, Art. I; Pet. App. 30) provides that Iran and the United States will promote settlement of claims subject to the Tribunal's jurisdiction and, failing that, will submit the claims to arbitration by the Tribunal. See also Decl. I, General Principle B (Pet. App. 21-22). Section 1 of Executive Order No. 12294 (Pet. App. 52-53) implements these provisions, and makes arbitration exclusive, by suspending the domestic effect of any claims that may be presented to the Tribunal.

Claims taken up for settlement by the Executive become claims of the United States. See, *e.g.*, *Z. & F. Assets Realization Corp.* v. *Hull*, 311 U.S. 470, 487 (1941); *United States ex rel. Boynton* v. *Blaine*, *supra*, 139 U.S. at 323; *Great Western Ins. Co.* v. *United States*, 19 Ct. Cl. 206, 217-218, aff'd on other grounds, 112 U.S. 193 (1884).[44] Consequently, the Executive fully controls the manner of their presentation,[45] and may make such settlement as it deems appropriate, even without the claimant's consent. 1 M. Whiteman, *Damages in International Law* 275 (1937); *Restatement (Second) of Foreign Relations Law* § 213 (1965); 2 C. Hyde, *supra* note 32, at 890.[46]

It follows that the Executive's authority over claims settlement includes the power to make that settlement the exclusive remedy for satisfaction of the claim involved,[47]

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[44] See also L. Henkin, *Foreign Affairs and the Constitution* 262 (1975); 1 R. Lillich & B. Weston, *supra*, at 1; 6 Moore, *A Digest of International Law* 616 (1906); 1 M. Whiteman, *Damages in International Law* 275 (1937).

[45] The Executive also has unfettered discretion, as it must, concerning whether to espouse a particular claim at all. *Restatement (Second) of Foreign Relations Law* § 212 (1965); *Miller* v. *United States*, 583 F.2d 857, 865 (6th Cir. 1978); *United States* v. *La Abra Silver Mining Co.*, 29 Ct. Cl. 432, 512-513 (1894), aff'd, 175 U.S. 423 (1899). In fact, claims have been espoused even over the objections of the nationals whose claims were involved. See 8 M. Whiteman *Digest of International Law* 1224 (1967); [1973] *Digest of United States Practice in International Law* 332-333.

[46] Individualized consent of each claimant would be difficult if not impossible to obtain in situations involving lump sum settlements covering perhaps thousands of potential claims.

[47] Typically, claims agreements have contained specific provisions stating that the settlement is to provide the exclusive remedy for satisfaction of the claims. Among the lump sum agreements referred to in note 39, *supra*, see, *e.g.*, those with China (Arts. II(a) and V); Egypt (Arts. 3, 4, 6 and 7); Hungary (Arts. 1(1), 6 and 7); Bulgaria (Arts. I(1) and III(2)); Poland (Arts. I(A), IV and V(B)); Rumania (Arts. I(1) and IV); and Yugoslavia (Arts. 1(a) and 9(b)). Among the arbitration agreements referred to in note 40, *supra*, see, *e.g.*, Arts. XI, XIII, and XVIII of the

thereby extinguishing the claim's existence apart from the settlement process. Except as may otherwise be provided in the agreement, each claim becomes merged in the settlement, "estop[ping] the claimant from all right to again demand any redress from the foreign country" (E. Borchard, *supra* note 32, at 368), "terminating any recourse under domestic law" (L. Henkin, *supra*, at 262), and "reliev[ing] the foreign state of further responsibility" with respect to the claim. *Restatement*, *supra*, at § 213, Comment a.[48] Accordingly, the President acted well within his authority in the present case by making arbitration the exclusive remedy for claims within the jurisdiction of the Tribunal and agreeing that the Tribunal's awards would be final and binding. Indeed, the ability of the Executive to negotiate and conclude a satisfactory claims settlement—and thus its ability to conduct the foreign affairs of the United States in accordance with the Constitution—would be effectively undermined if a foreign state could not be assured that a settlement would be respected as the exclusive, final, and binding resolution of the claims.

3. *The President's Authority To Settle Claims Against Iran In The Present Case Is Also Supported By Treaty And Statute*

a. Quite aside from the President's constitutionally-based settlement authority, the 1955 Treaty of Amity,

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Treaty with the United Kingdom; Para. 7 of the Agreement with Spain; Arts. II and V of the 1868 Treaty with Mexico; and Arts. X and XII of the 1839 Treaty with Mexico. On the other hand, some agreements have expressly provided that they do not establish an exclusive remedy for claimants. See, *e.g.*, Art. II(4) of the Arbitration Agreement between the United States and Canada Relating to the Gut Dam, Mar. 25, 1965, 17 U.S.T. 1566, 1569, T.I.A.S. No. 6114.

[48] The courts have long recognized that claims settlements may foreclose all other remedies. See, *e.g.*, *Comegys* v. *Vasse*, 26 U.S. (1 Pet.) 191, 211 (1828); *United States* v. *The Schooner Peggy*, *supra*; *Ozanic* v. *United States*, *supra*; *Meade* v. *United States*, 2 Ct. Cl. 224, 275-276 (1866), aff'd, 76 U.S. (9 Wall.) 691, 725 (1869).

Economic Relations, and Consular Rights Between the United States and Iran, Aug. 15, 1955, 8 U.S.T. 899, T.I.A.S. No. 3853, furnishes an independent basis for the Executive Agreement's providing for the submission of claims to arbitration.[49] Article XXI(2) of the Treaty provides for the resolution of disputes with Iran regarding the interpretation or application of the Treaty by submission to the International Court of Justice or "by some other pacific means," as agreed by the parties. Arbitration is, of course, a pacific means of settlement (see, *e.g.*, United Nations Charter, Art. 33(1)), and post-Charter friendship, commerce and navigation treaties generally refer to "pacific means" of settlement in clear contemplation of the means specified in Article 33.

Petitioner's contract claims against Iran, as well as claims of other American commercial claimants, are based on actions by the Government of Iran that clearly implicate provisions of the Treaty. Certain claims, including those based on breach of contract or expropriation, involve allegedly "unreasonable" or "discriminatory" measures taken by Iran against United States nationals and companies that "impair their legally acquired rights and interests," in violation of Article IV(1) of the Treaty. Other claims concern actions by which Iran allegedly failed to accord property of United States nationals and companies "the most constant protection and security" required by Article IV(2). Similarly, expropriation claims involve Iran's obligation to provide "prompt payment of just compensation." Art. IV(2). See also Art. IV(1) (each party shall assure effective enforcement of contract rights); Art. IV(4) (enterprises of nationals and companies are entitled to equal treatment in the conduct of their business).

Once taken up by the United States, claims falling within the terms of the Treaty become claims of the United States, and the dispute therefore becomes one

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[49] See McDougal & Lans, *supra*, 54 Yale L.J. at 205; *Restatement, supra*, at § 119.

"between the High Contracting Parties" (Art. XXI(2)).[50] Because the President is charged with faithfully executing the laws (U.S. Const. Art. II, § 3), including international agreements (*id.* at Art. VI; *United States* v. *Pink*, *supra*, 315 U.S. at 230), and must speak for the United States in the international arena (see, *e.g.*, *United States* v. *Curtiss-Wright Export Corp.*, *supra*, 299 U.S. at 319-329), he determines when and how to invoke the dispute resolution provisions of the Treaty. In the present instance, the President has invoked his authority by agreeing to the establishment of an international arbitration mechanism.

b. Pursuant to 22 U.S.C. 1732, whenever the President is made aware that a foreign government is unjustly holding an American citizen and a demand for his release is refused, "the President shall use such means, not amounting to acts of war, as he may think necessary and proper to obtain or effectuate the release * * *." "The legislative history of the Hostage Act [22 U.S.C. 1732] indicates that it was designed to accord the President a broad discretion to resolve a matter usually regarded as of the utmost urgency—the taking of American nationals as hostages." *American Int'l Group, Inc.* v. *Islamic Republic of Iran*, *supra*, slip op. 2 (separate statement of McGowan, J.).

As a statute that is designed to be used in times of emergency, Section 1732 delegates to the President all powers that bear a "reasonable relation to the particular emergency confronted" (*United States* v. *Yoshida International, Inc.*, 526 F.2d 560, 579 (C.C.P.A. 1975)). And because the statute relates to the conduct of foreign affairs, such a broad delegation of powers is permissible. *United States* v. *Curtiss-Wright Export Corp.*, *supra*,

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[50] Interpreting a similar dispute clause, the Permanent Court of International Justice held that once the claimant's government took up the "dispute" of its national, that dispute "entered upon a new phase; it entered the domain of international law, and became a dispute between two States." *The Mavrommatis Palestine Concessions*, Judgment, P.C.I.J. Series A, No. 2, at 12 (1924).

299 U.S. at 320. Thus, at least where a comprehensive agreement includes as a central element the release of American hostages, Congress may reasonably be held to have affirmatively confirmed in the President alone whatever authority the United States Government, as a sovereign whole, necessarily possesses to deal with other sovereigns for the settlement of mutual claims. See pages 40-41, *supra*.

c. Finally, the President's broad authority under IEEPA supports the President's actions suspending the domestic effect of claims against Iran. When a national emergency has been declared under IEEPA, the President may "regulate, * * * nullify * * *, prevent, or prohibit * * * [the] acquisition * * * of * * * or [the] exercising [of] any right, power, or privilege with respect to * * * any property in which any foreign country * * * has any interest" (50 U.S.C. (Supp. III) 1702(a)(1)(B)). Claims against Iran in American courts represent attempts to acquire or exercise a right with respect to Iranian property, particularly to the extent, as here, that the claimant has obtained a pre-judgment attachment or seeks to execute on a judgment. Pursuant to the President's broad authority under IEEPA, the acquisition or exercising of such a right in foreign property may be regulated, nullified, prevented, or prohibited. See *Chas. T. Main Int'l, Inc.* v. *Khuzestan Water & Power Authority*, *supra* (Breyer, J., concurring); but see *id.* at 13-14 & n.13 (majority opinion); *American Int'l Group, Inc.* v. *Islamic Republic of Iran*, *supra*, slip op. 26-27 n.15.

4. *The Claims Settlement Agreement Does Not Interfere With The Jurisdiction Of The Courts*

The Agreement with Iran providing for the settlement of claims through arbitration does not infringe upon the jurisdiction or powers of Article III courts, as petitioner suggests (Pet. 12, 15 n.7). The President's long-recognized authority to settle claims of United States nationals is not defeated in a particular instance merely

because the claimant happens to have filed a lawsuit. Such a result would greatly impede the exercise of the President's foreign relations power.

The Agreement with Iran, as implemented by Executive Orders and regulations, has become part of the law of the land (*United States* v. *Pink*, *supra*, 315 U.S. at 230; *United States* v. *Belmont*, 301 U.S. 324, 331-332 (1937)), and as such, domestic courts are obliged to apply the law resulting from the Agreement to pending cases. *United States* v. *The Schooner Peggy*, 5 U.S. (1 Cranch) 103 (1801). As the District of Columbia Circuit observed:

> Executive Order 12294, issued by President Reagan on February 24, 1981 ordered "[a]ll claims which may be presented to the . . . Claims Tribunal . . . suspended . . . ." We note that the President did not order the litigation suspended, or the power of the courts to consider the claims suspended. Instead, he acted with respect to the claims only. We read this as an effort to modify not the jurisdiction of the courts, but the substantive rule of law they are to apply. If constitutional, the Executive Order creates the situation in which [claimants], in the words of Fed. R. Civ. P. 12(b)(6), have "fail[ed] to state a claim upon which relief can be granted."

American Int'l Group, Inc. v. *Islamic Republic of Iran*, *supra*, slip op. 23 (footnote omitted); see also *Chas. T. Main Int'l, Inc.* v. *Khuzestan Water & Power Authority*, *supra*, at 16, 24.[51]

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[51] The district court in *Marschalk Co.* v. *Iran National Airlines Corp.*, No. 79 Civ. 7035 (CBM) (S.D.N.Y. June 11, 1981), failed to understand this critical distinction in concluding (at 17, 31-34, 45, 51, 56) that the Agreement interferes with the court's jurisdiction.

That court also erred in relying on language in General Principle B of Declaration I, which states that "the United States agrees to *terminate* all legal proceedings in United States courts involving claims of United States persons and institutions against Iran and its state enterprises" (Pet. App. 22; emphasis added). The President has construed and implemented the Agreement in a manner

This conclusion is not altered by the fact that the district court entered judgment against the Government of Iran and AEOI on February 18, 1981—before the issuance of Executive Order No. 12294, which suspended the domestic effect of claims that may be presented to the Tribunal. That judgment was improperly entered.[52] But in any event, petitioner's underlying claim against the defendants as to whom it has obtained a judgment, its claim against the remaining defendants, and its claim on the unpaid judgment pending on appeal in the Ninth Circuit, all are "claims * * * outstanding on [January 19, 1981] * * * and arise out of debts, contracts * * * expropriations or other measures affecting property rights

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that effects only the domestic suspension of the cause of action underlying the lawsuit. Cf. *Kolovrat* v. *Oregon*, 366 U.S. 187, 194 (1961); *Factor* v. *Laubenheimer*, 290 U.S. 276, 295 (1933). He has not purported to direct the courts to order an immediate and final termination of the lawsuit.

[52] The judgment was entered in response to petitioner's motion, filed after the Agreement with Iran had been announced, for a judgment based on AEOI's failure to comply with discovery orders. See page 5 & note 6, *supra*. The Agreement made clear that many claims underlying litigation pending against Iran would be referred to arbitration. The United States requested the district court to stay proceedings pending the present Administration's review of the settlement, which was expected to be, and was, concluded by February 26, 1981. Nevertheless, and with no apparent need for expedition, the court entered the requested judgment. In our view, due respect for a coordinate Branch of government and the Executive's role in the conduct of foreign relations required the district court to stay its hand for the brief time requested. The judgment also appears to have been entered in violation of the Iranian Assets Control Regulations, 31 C.F.R. 535.201, 535.203(e), 535.310, 535.504(b) (1980). In any event, on appeal, the court of appeals will be required to apply the Agreement with Iran, as implemented by Executive Order No. 12294, and order proceedings stayed pending presentation of petitioner's claim to the Tribunal. See *United States* v. *The Schooner Peggy*, *supra*. This Court need not decide these questions, however; the essential point for present purposes is that petitioner cannot litigate further on its claim by seeking to execute on its judgment against the Government of Iran and AEOI or by seeking a judgment against the remaining defendants.

* * *" (see Decl. II, Art. II, ¶ 1; Pet. App. 30). They are, therefore, arbitrable, at least on their face.

Whether or not a claimant has an unsatisfied judgment cannot and does not affect the scope of the President's power to settle claims. See generally *American Int'l Group, Inc.* v. *Islamic Republic of Iran, supra*, slip op. 33-34. Indeed, this Court's decision in *United States* v. *The Schooner Peggy, supra*, is dispositive on this issue. In that case, the government's settlement of a claim occurred after the circuit court had entered judgment for the claimants but before this Court had issued its decision affirming the claims settlement power. The holding of this Court in *Schooner Peggy* has been summarized (and the summary approved by the District of Columbia Circuit) as follows:

> [T]he courts are obligated to apply law (otherwise valid) as they find it at the time of final judgment, including, when a case is on review, the time of the appellate judgment.

P. Bator, P. Mishkin, D. Shapiro & H. Wechsler, *Hart and Wechsler's The Federal Courts and the Federal System* 316 n.4 (1973), quoted in *American Int'l Group, Inc.* v. *Islamic Republic of Iran, supra*, slip op. 25.

B. The Foreign Sovereign Immunities Act Did Not Implicitly Divest The President Of The Authority To Settle Claims

Despite the firmly rooted practice of claims settlement by Executive Agreement and the compelling reasons for recognizing that power in the President, petitioner argues (Pet. 15 n.7, 17-19) that Congress implicitly divested the President of that authority when it enacted the Foreign Sovereign Immunities Act (FSIA) in 1976. Pub. L. No. 94-583, 90 Stat. 2891. The FSIA establishes a comprehensive statutory scheme delineating the immunity of a foreign sovereign to suit in United States courts. 28 U.S.C. 1602 *et seq.*; see generally *Ruggiero* v. *Compania Peruana de Vapores "Inca Capac Yupanqui,"* 639 F.2d 872 (2d Cir. 1981).

Prior to enactment of the FSIA, a foreign government's immunity to suit was determined on a case-by-case basis. Often when a foreign government wished to assert its immunity to suit, it would request the Department of State to file a formal suggestion of immunity with the court. The courts generally deferred to these suggestions of a foreign sovereign's immunity. See, *e.g.*, *Mexico* v. *Hoffman*, 324 U.S. 30 (1945); *Ex Parte Peru*, *supra*. A principal objective of the FSIA was to vest in the courts the authority to make these immunity determinations, without recourse to the Executive. See *American Int'l Group, Inc.* v. *Islamic Republic of Iran*, *supra*, slip op. 29; *Chas. T. Main Int'l, Inc.* v. *Khuzestan Water & Power Authority*, *supra*, at 20-21; H.R. Rep. No. 94-1487, 94th Cong., 2d Sess. 7 (1976); S. Rep. No. 94-1310, 94th Cong., 2d Sess. 9 (1976).

Essentially, the FSIA "codified the previously-extant legal principles known as the restrictive theory of sovereign immunity," under which "a foreign sovereign may be sued for its actions that are commercial or otherwise private in nature" (*American Int'l Group, Inc.* v. *Islamic Republic of Iran*, *supra*, slip op. 29). Petitioner argues that because persons who have commercial claims against a foreign sovereign now are not generally barred by principles of sovereign immunity from filing and maintaining suit in United States courts, they no longer require the President's assistance to recover on their claims. Hence, the argument proceeds, there is no longer any need to recognize a power in the President to settle their claims. This argument is seriously flawed in a number of respects.

First, and most fundamentally, the power of the President to settle international claims of United States nationals does not derive from the private interest or consent of individual claimants—although the exercise of that authority in fact does substantially meet the imporant concern of the United States and its nationals in obtaining redress for injuries sustained at the hands of a foreign government. Rather, the claims settlement au-

thority derives directly from the Constitution, as a necessary incident to the Executive's plenary authority to conduct the Nation's foreign relations. *United States* v. *Pink*, *supra*, 315 U.S. at 229-230. This constitutionally-based power does not expand or contract depending upon the availability of private remedies to individual claimants. The Court recognized in *Pink* that the President's ability to administer the Nation's foreign policy might be thwarted if he could not settle claims of United States nationals against foreign governments (*id.* at 230). This consideration applies whether or not individual claimants happen to have filed suit in United States courts, as the present case illustrates.

In *Pink*, the Court viewed the power to settle claims as so essential that it could not be denied to the President unless the "historic conception of [his] powers and responsibilities * * * is to be drastically revised" (315 U.S. at 230). Before construing an Act of Congress such as the FSIA to have "drastically revised" the President's foreign relations powers in this manner, the Court must at least insist that "Congress speak with a clear voice" (*Pennhurst State School and Hospital* v. *Halderman*, No. 79-1404 (Apr. 20, 1981), slip op. 13). Compare note 33, *supra*.

In the FSIA, however, Congress has not spoken on the claims settlement issue at all. There is no mention of that authority in the text of the FSIA. Nor has petitioner cited any reference in the legislative history of the statute that suggests a congressional intent to bar the President from exercising the very claims settlement authority that Congress itself has long acknowledged to reside in the Executive, particularly in circumstances as compelling as the Iranian crisis. Indeed, petitioner concedes that "there is little indication that Congress considered emergencies such as the Iranian hostage crisis when it enacted the FSIA" (Pet. 18).[53]

[53] During the 1973 hearings on the precursor to the bill that became the FSIA, Administration witnesses referred to claims

And, finally, as the District of Columbia Circuit observed, "[t]he FSIA [was] drafted by the Departments of State and Justice,[54] and thus [was] unlikely to have been designed to restrict executive authority by implication." *American Int'l Group, Inc.* v. *Islamic Republic of Iran*, *supra*, slip op. 29). Against this background there is no basis whatever for construing the FSIA as an attempted withdrawal of the Executive's constitutionally-based claims settlement authority wherever a suit on a particular claim will lie under the FSIA.[55]

In addition, petitioner's argument based on the FSIA ignores the limited purpose of that Act. "FSIA was directed toward a single topic—sovereign immunity." *Chas. T. Main Int'l, Inc.* v. *Khuzestan Water & Power Authority*, *supra*, at 20.[56] The Agreement with Iran and the implementing Executive Order and regulations do not

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settlement through diplomatic means, noting that this was "the traditional means whereby claims of citizens against foreign governments have been adjudicated or settled." *Immunities of Foreign States: Hearing on H.R. 3493 Before the Subcomm. on Claims and Governmental Relations of the House Comm. on the Judiciary*, 93d Cong., 1st Sess. 18 (1973); see also *id.* at 26, 31. Neither the witnesses nor the Subcommittee members expressed the view that this traditional means of settlement would be barred to the President merely because other remedies might be available by virtue of the FSIA.

[54] See H.R. Rep. No. 94-1487, *supra*, at 6; S. Rep. No. 94-1310, *supra*, at 11.

[55] Such a result would pose insurmountable barriers to the Executive where, as here, it is necessary to achieve an expeditious en bloc settlement of outstanding claims. Such settlements typically involve hundreds or even thousands of claims, and it would be impossible for the Executive to make the complex legal and factual judgments necessary to determine the availability of a remedy under the FSIA for each individual claim in order to determine for itself and to inform the foreign sovereign which outstanding claims were in fact to be included in the settlement arrangement.

[56] As the First Circuit noted (at 20 n.20), the FSIA did not, for example, affect the closely related Act of State doctrine.

purport to confer an immunity to suit upon the Iranian defendants, in contravention of the terms of the FSIA.[57] The Iranian defendants were required to appear and defend the suits on the merits until the district court stayed further proceedings pending presentation of petitioner's claim to the Tribunal. Suspension of the domestic effect of petitioner's claim merely rendered it a claim on which relief cannot be granted in federal district court for the period of the suspension, even though the Iranian defendants may be amenable to suit. The FSIA, of course, was "not intended to affect the substantive law of liability" (H.R. Rep. No. 94-1487, *supra*, at 12; S. Rep. No. 94-1310, *supra*, at 11). It is necessary to look outside the FSIA itself for the substantive law of liability to be applied by the court. In suits against Iran, the Executive Order and regulations implementing the Agreement establish that substantive law, and the district court here must apply it. See pages 47-50, *supra*.[58]

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[57] 28 U.S.C. 1606 provides that a foreign state not immune from suit "shall be liable in the same manner and to the same extent as a private individual under like circumstances." Contrary to petitioner's assertion (Pet. 15 n.7, 18), however, the Executive Order suspending the domestic effect of claims against Iran does not affect the *liability* of the Iranian defendants. They will remain fully liable on petitioner's claim, to the extent it is valid, when the claim is presented to the Tribunal.

[58] Under 28 U.S.C. 1604 and 1609, the foreign sovereign immunity principles in the FSIA are made subject to "existing international agreements" in effect when the FSIA was enacted. A provision in the bill proposed by the Departments of State and Justice that would have made the FSIA subject to "future" agreements as well was deleted in committee. H.R. Rep. No. 94-1487, *supra*, at 10; S. Rep. No. 94-1310, *supra*, at 6. In concluding that the FSIA had withdrawn the Executive's settlement authority with respect to claims for which the FSIA waived the foreign government's immunity to suit, the district court in *Marschalk Co.* v. *Iran National Airlines*, *supra*, relied in large part on the congressional committee's deletion of the reference to "future" agreements. But the reports state that "[t]he purpose for including the reference was to take into account the possibility that *sovereign immunity* might become

Finally, congressional actions both contemporaneous with [59] and subsequent to the enactment of the FSIA that endorse the President's claims-settlement authority are wholly inconsistent with the notion that Congress intended to terminate or infringe that authority when it passed the FSIA. As we have explained above (see pages 29-30, *supra*), Congress recognized and approved the President's claims-settlement authority when it enacted IEEPA in 1977, after the FSIA became law, to allow the President to freeze foreign assets in aid of that process. Moreover, in the Act of Oct. 18, 1976, Pub.

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the subject of an international convention" (H.R. Rep. No. 94-1487, *supra*, at 10 (emphasis added); S. Rep. No. 94-1310, *supra*, at 6 (emphasis added)). As we have explained, the Agreement with Iran and the implementing Executive Orders do not purport to confer upon the Iranian defendants an immunity to suit. Moreover, the reference to future agreements was deleted not to *prohibit* such agreements, but because the reference was "unnecessary and misleading" (*ibid.*). The reference was thought to be unnecessary because a convention entered into by the United States would, under Article VI of the Constitution, take precedence over the FSIA in any event. It was thought to be misleading because it might be construed affirmatively to authorize a future international agreement.

[59] The 94th Congress, which enacted the FSIA, also considered but did *not* enact proposals designed to limit the power of the Executive to enter into Executive Agreements. Executive representatives submitted testimony and legal arguments opposing the bills and supporting the authority of the President to enter into Executive Agreements, including claims-settlement agreements. See *Congressional Oversight of Executive Agreements—1975: Hearings on S. 632 and S. 1251 Before the Subcomm. on Separation of Powers of the Senate Comm. on the Judiciary*, 94th Cong., 1st Sess. 243-261, 302-311 (1975); *Congressional Review of International Agreements: Hearings Before the Subcomm. on International Security and Scientific Affairs of the House Comm. on International Relations*, 94th Cong., 2d Sess. 167, 246 (1976). It is most unlikely that the same Congress that, after extensive consideration, declined to limit the President's authority to enter into Executive Agreements, accomplished that very goal through the FSIA, without anywhere stating that purpose. See *NLRB* v. *Bell Aerospace Co.*, 416 U.S. 267, 285 n.13 (1974).

L. No. 94-542, 90 Stat. 2509-2513, which became law just three days prior to the FSIA, Congress amended the International Claims Settlement Act of 1949 to authorize the Foreign Claims Settlement Commission "to receive and determine * * * the validity and amounts of [certain] claims by nationals of the United States against the German Democratic Republic * * * " (22 U.S.C. 1644b). Congress established a special claims fund for the payment of such claims, to be "composed of such funds as may be paid to the United States by the German Democratic Republic pursuant to the terms of any agreement settling such claims" (22 U.S.C. 1644a(5)).[60] Under the statutory provisions governing the Commission's work generally, the action of the Commission in allowing or denying any claim is "final and conclusive" and is not subject to review "by any court by mandamus or otherwise" (22 U.S.C. 1623(h)). See *Z. & F. Assets Realization Corp.* v. *Hull*, *supra*, 311 U.S. at 489; *DeVegvar* v. *Gillilland*, 228 F.2d 640, 642 (D.C. Cir.), cert. denied, 350 U.S. 994 (1956); *First National City Bank* v. *Gillilland*, 257, F.2d 223, 226-227 (D.C. Cir.), cert. denied, 358 U.S. 837 (1958). Congress' preclusion of judicial review of the Commission's decisions in granting or denying an award to be paid out of the monies received in settlement of claims is at odds with the assertion that Congress intended in the FSIA to give claimants an absolute right to press their claims against foreign sovereigns in court even though the Executive has provided for the settlement of the claims.

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[60] The "reason for this bill" was to allow the Executive to "be in a better position to negotiate an adequate settlement * * * of these claims" (S. Rep. No. 94-1188, 94th Cong., 2d Sess. 2 (1976)). See generally *Status of Claims Settlements With Nonmarket Countries, East German Claims Bill: Hearings on H.R. 14642 Before the Subcomm. on International Trade and Commerce of the House Comm. on International Relations*, 94th Cong., 2d Sess. 1, 17, 26, 29-32, 42, 50, 52, 68 (1976).

Similarly, Congress amended the International Claims Settlement Act in 1980 to provide for determination of claims against Vietnam (Act of Dec. 28, 1980, Pub. L. No. 96-606, Section 701, 94 Stat. 3534), again contemplating a future "agreement settling those claims" (Section 702(5), 94 Stat. 3535).[61] Congress also has indicated its approval of the claims settlement agreement with the People's Republic of China, under which the United States accepted $80.5 million in full and final settlement of specified claims against the People's Repubic (see note 39, *supra*), by establishing an amended allocation formula for distribution of the funds received pursuant to the agreement. Act of Oct. 13, 1980, Pub. L. No. 96-445, 94 Stat. 1891; see also H.R. Rep. No. 96-915, 96th Cong., 2d Sess. 2 (1980).

In sum, the Executive, which proposed the FSIA, has never understood that Act to affect its established power to settle claims of American nationals, and the Agreement with Iran was entered into on that understanding. Particularly in light of Congress' recognition of the President's claims-settlement authority and the absence of any indication in the FSIA or its legislative history that Congress intended to withdraw or diminish that authority, the Court should not adopt a construction of the FSIA that might well place the United States in breach of its international obligations under a solemn agreement entered into to resolve the grave crisis then confronting the Nation. Such a construction could have serious consequences for the United States both in this instance (see page 9, *supra*), and in future crises as well.

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[61] See H.R. Rep. No. 96-915, 96th Cong., 2d Sess. 2-3 (1980); *Adjudication of Claims Against Vietnam: Hearing on H.R. 2200 Before the Subcomm. on Asian and Pacific Affairs and on International Economic Policy and Trade of the House Comm. on Foreign Affairs*, 96th Cong., 1st Sess. 1, 3, 4, 6, 7, 10, 12, 18 (1979).

C. The President's Actions Do Not Constitute A Taking Of Property Without Just Compensation

Although petitioner lists among the questions presented by its petition the question whether the President's actions constitute an unconstitutional taking of property (Pet. i), petitioner does not press that argument in the body of its petition. In any event, the taking argument is without merit.

The President has exercised two distinct powers that affect petitioner's suit against the Iranian defendants. First, he has exercised his authority under IEEPA to direct the transfer of Iranian property, including that against which petitioner had obtained orders of attachment. But petitioner's attachments were obtained as a result of a license that was expressly made revocable at any time and was in any event subordinate to the President's paramount and previously acquired power to direct the transfer of the property pursuant to IEEPA. The President's revocation of the conditional license for attachments and his transfer of the property under IEEPA therefore do not constitute a taking within the meaning of the Just Compensation Clause. See *Chas. T. Main Int'l, Inc.* v. *Khuzestan Water & Power Authority*, *supra*, at 12-13; *American Int'l Group, Inc.* v. *Islamic Republic of Iran*, *supra*, slip op. 38-39; see note 29, *supra*.

The President also has exercised his separate power under the Constitution and statutes to settle claims against Iran by providing for their submission to arbitration. The arbitration will be conducted by experienced arbitrators, applying internationally recognized rules of procedure, and the Government of Iran is obligated to satisfy all awards made by the Claims Tribunal. If there are insufficient funds in the escrow account, the Tribunal's awards may be enforced "in the courts of any nation

in accordance with its laws" (Decl. I, ¶ 7; Decl. II, Art. IV, ¶ 3; Pet. App. 25, 32). If petitioner's claim is found by the Tribunal *not* to be within its jurisdiction, petitioner may proceed with its lawsuit in federal court. In that event, the existence of petitioner's cause of action against the Iranian defendants will have been unaffected by the President's actions, and therefore plainly could not form the basis of a taking claim. But petitioner's underlying claim against Iran likewise is unaffected even if that claim *is* within the Tribunal's jurisdiction. The effect of the Agreement in that event would simply be to provide for the same claim to be heard in a different forum.

Petitioner nonetheless apparently contends that the provision for settlement of its claim through arbitration rather than litigation constitutes an unconstitutional taking of its property. Both courts of appeals that have considered the taking issue with respect to the settlement of claims have found it to be premature, because it necessarily depends on speculation about possible obstacles to recovery through the arbitration process. *Chas. T. Main Int'l, Inc.* v. *Khuzestan Water & Power Authority*, *supra*, at 23-24; *American Int'l Group, Inc.* v. *Islamic Republic of Iran*, *supra*, slip op. 34-38. We agree. Indeed, petitioner's taking claim necessarily depends on the factual assumption that the arbitration process will not operate in practice in the manner set forth in the Agreement. For if the Agreement is implemented as planned, meritorious claims within the Tribunal's jurisdiction will be fully satisfied.[62] We do not believe it would be appropriate in considering the taking claim to indulge the presumption that an international agreement such as this, to which each Nation has committed itself and its resources, will not provide the just remedy it promises.

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[62] In that event, there would be no valid claim of a Fifth Amendment violation both because the cause of action was not taken and because, in any event, just compensation was paid.

In any event, the mere substitution of one competent forum for another to hear the same underlying claim and to award complete relief if the claim is found to be meritorious cannot be thought to constitute a taking of property in violation of the Fifth Amendment. This is particularly so when the provision for arbitration—which this Court has frequently recognized to be an appropriate means for resolving international disputes (see note 40, *supra*)—is made pursuant to the President's broad constitutional and statutory power in time of crisis, in a good faith effort to protect the interests of the claimants themselves. See pages 13-14, *supra*. Cf. *United States* v. *Sioux Nation of Indians*, No. 79-639 (June 30, 1980), slip op. 43-45.

CONCLUSION

The judgment of the district court should be affirmed.

Respectfully submitted.

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JUNE 1981

APPENDIX

Executive Order 12170 of November 14, 1979

BLOCKING IRANIAN GOVERNMENT PROPERTY

Pursuant to the authority vested in me as President by the Constitution and laws of the United States including the International Emergency Economic Powers Act, 50 U.S.C.A. sec. 1701 *et seq.*, the National Emergencies Act, 50 U.S.C. sec. 1601 *et seq.*, and 3 U.S.C. sec. 301,

I, JIMMY CARTER, President of the United States, find that the situation in Iran constitutes an unusual and extraordinary threat to the national security, foreign policy and economy of the United States and hereby declare a national emergency to deal with that threat.

I hereby order blocked all property and interests in property of the Government of Iran, its instrumentalities and controlled entities and the Central Bank of Iran which are or become subject to the jurisdiction of the United States or which are in or come within the possession or control of persons subject to the jurisdiction of the United States.

The Secretary of the Treasury is authorized to employ all powers granted to me by the International Emergency Economic Powers Act to carry out the provisions of this order.

This order is effective immediately and shall be transmitted to the Congress and published in the Federal Register.

/s/ Jimmy Carter

THE WHITE HOUSE,
November 14, 1979.

DECLARATION OF ALEXANDER M. HAIG, JR.

I, Alexander M. Haig, Jr., declare under penalty of perjury as follows:

1. I am the Secretary of State. Under the direction of President Reagan, I am responsible for coordinating the execution of United States foreign policy. In this capacity, I have studied the agreements concluded by President Carter on January 19, 1981, for the release of the American hostages in Iran, and participated in the policy review that lead to President Reagan's decision to implement those agreements in strict accordance with their terms.

2. A number of actions contemplated by the agreements have already been carried out including, particularly, the release of the 52 former hostages and the unblocking of nearly $8 billion of Iranian assets that were held in the Federal Reserve Bank of New York and in the foreign branches of U.S. banks. Approximately $5.1 billion of those funds have been made available for payment of loans made by American banks and their syndicate partners.

3. Important commitments remain to be implemented under the agreements. These commitments include the establishment of an arbitration process for the resolution of U.S. commercial claims against Iran; the establishment of a $1 billion security account for the payment of arbitral awards made to U.S. claimants; the transfer of Iranian assets from the United States into the security account and to Iran; and the termination through arbitration of U.S. commercial claims against Iran.

4. The Administration has determined that the conclusion of the agreements was a legal exercise of Presidential authority and that the United States should implement these agreements because they are in the interest of the United States. They represent the surest way of resolving many of the financial problems between the

United States and Iran consistent with the interests of U.S. claimants and the broader interests of the United States in the Persian Gulf area, a region of strategic importance to the United States.

5. If the United States should be prevented from freeing the Iranian assets from judicial restraints, it will not be able to carry out its commitment to return the assets to Iran or to fund the security account which is to be used to pay arbitration awards. In this event, the whole structure of the agreements may begin to crumble, and there could be set in motion a series of actions and reactions that would have serious consequences both for the claimants and for the foreign policy of the United States.

6. Judicial action preventing the United States from carrying out its obligations under these agreements would seriously damage the President's capacity to speak and act for the United States in the conduct of its foreign relations, and would be perceived abroad as a serious weakness in the ability of the United States Government to carry out its international commitments. It is my judgment that the foreign policy and national security interests of the United States would be best served if the President is permitted to implement the Iranian agreements in accordance with their terms.

/s/ Alexander M. Haig, Jr.
ALEXANDER M. HAIG, JR.

Executed on February 24, 1981.

15 Weekly Comp. of Pres. Doc. 2117 (Nov. 14, 1979)

BLOCKING IRANIAN GOVERNMENT PROPERTY

Announcement of the President's Action.
November 14, 1979

The President has today acted to block all official Iranian assets in the United States, including deposits in United States banks and their foreign branches and subsidiaries. This order is in response to reports that the Government of Iran is about to withdraw its funds. The purpose of this order is to ensure that claims on Iran by the United States and its citizens are provided for in an orderly manner.

The order does not affect accounts of persons other than the Government of Iran, the Central Bank of Iran, and other controlled entities. The precise amounts involved cannot be ascertained at this time, but there is no reason for disturbance in the foreign exchange or other markets.

The President is taking this action pursuant to the International Emergency Economic Powers Act, which grants the President authority "to deal with any unusual and extraordinary threat to the national security, foreign policy, or economy of the United States."

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